No. 82-156

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

CITY OF RIVERSIDE, LINFORD L. RICHARDSON, MICHAEL S. WATTS, DAN PETERS, GERALD MILLER, and ROBERT PLAIT,

Petitioners,

vs.

SANTOS RIVERA, JENNIE RIVERA, DONALD RIVERA, JEROME RIVERA, LEE ROY RIVERA, MARK LARABEE, ENRIQUE FLORES, and MANUAL FLORES, JR.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW:

What are the proper standards within which a district court may exercise its discretion in awarding attorneys fees to prevailing parties under Section 1988 of Title 42 of the United States Code.

PARTIES INVOLVED

The following parties have an interest in the outcome of this case:

SANTOS RIVERA, JENNIE RIVERA, DONALD RIVERA, JEROME RIVERA, LEE ROY RIVERA, MARK LARABEE, ENRIQUE FLORES, MANUAL FLORES, JR., Plaintiffs and Respondents;

ROY B. CAZARES, GERALD LOPEZ, Attorneys at Law;

CITY OF RIVERSIDE, LINFORD L. RICHARDSON, MICHAEL S. WATTS, DAN PETERS, GERALD MILLER, ROBERT PLAIT, Defendants and Petitioners.

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No. ________________

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable, the Chief Justice and Associates Justices of the Supreme Court of the United States:

The City of Riverside, Linford L. Richardson, Michael S. Watts, Dan Peters, Gerald Miller, and Robert Plait, the Petitioners herein, pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on June 15, 1982.

OPINIONS BELOW

The June 15, 1982, opinion of the United States Court of Appeals for the Ninth Circuit, whose judgment is herein sought to be reviewed, is printed in a separate Appendix to this Petition at pages 1-1 through 1-17 thereof. No rehearing was sought. The prior opinion of the United States District Court for the Central District of California, also unreported, (as evidenced by its Findings of Fact and Conclusions of Law, and Judgment, respectively, is likewise printed in the Appendix, at pages 2-1 through 2-6 and 3-1 through 3-13 thereof.

JURISDICTION

The judgment of the Court of Appeals was entered on June 15, 1982. The jurisdiction of this Court is invoked pursuant to 28 USC §1254(1).

QUESTIONS PRESENTED

What are the proper standards within which a district court may exercise its discretion in awarding attorneys fees to prevailing parties under Section 1988 of Title 42 of the United States Code.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Section 1988 of Title 42 of the United States Code, which, at the time of trial herein, provided as follows:

> "The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title 'CIVIL RIGHTS,' and of Title 'CRIMES,' for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in

> the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

The said statute has been amended, which amendment was effective October 1, 1981. The statute (42 USC 1988) now provides:

> "The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions

necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party; other than the United States, a reasonable attorney's fee as part of the costs."

STATEMENT OF THE CASE

This suit was filed by eight individuals on June 4, 1976, against 32 defendants, including various police officers, the City of Riverside, and the chief of police of the Riverside Police Department. The complaint alleged the following: violation of the United States Constitution, and specifically the First, Fourth, Fifth, and Fourteenth Amendments thereof, violations of 42 USC 1981, 42 USC 1983, 42 USC 1985(3), 42 USC 1986, and 42 USC 1988, as well as pendent state claims for conspiracy, emotional distress, assault and battery, bodily injury, property damage, breaking and entering a residence, malicious prosection, defamation, false arrest and imprisonment, lost wages, negligence, attorney's fees, and a request for declaratory and injunctive relief. In sum, eight plaintiffs presented separate claims against 32 defendants, for a total of 256 individual claims.

However, 17 of the original 32 defendants were dismissed part way through the case after vigorously contested motions for summary judgment, the District Court finding that there was no triable issue of fact as to any claims pleaded by plaintiffs against any of these defendants (see Memorandum Opinion and Order and Judgment, as printed in Appendix, pages 4-1 through 4-14). Five of the remaining six defendants who moved for and were denied summary judgment (despite opposition thereto from plaintiffs/respondents) were found after trial, to have no liability to any of the plaintiffs/respondents on any theory whatsoever.

Trial of this matter took place on September 16, 1980. After deliberating from September 26, 1980, until October 7, 1980, the jury awarded recovery to plaintiffs/respondents on only three of the original 22 asserted claims, as aforesaid, and found only five individuals, in addition to the City, to have any culpability to any of the plaintiffs whatsoever. Thus, only six of the original 32 defendants (19%) had verdicts rendered against them by the jury, and these, on only three of the 22 originally asserted claims (14%). The total sum awarded on all three claims against the six defendants found culpable was $33,350.00. (See Judgment of the District Court, at pages 3-1 through 3-13 of the Appendix). No restraining orders issued as a result of this litigation.

On December 5, 1980, plaintiffs' counsel filed their motion for attorneys fees and costs, including a multiplier of two, in the sum of $495,713.51, or 15 times the amount of the jury award in the case. However, on April 3, 1981, the trial court awarded to plaintiffs'/respondents' attorneys the sum of $245,456.25, representing to the penny the amount of attorneys fees which plaintiffs' attorneys requested and at the rate they requested it, less the multiplier, less their out-of-pocket office expenses. Findings of Fact and Conclusions of Law were entered by the trial court on April 7, 1981, a copy of which is reprinted in the Appendix hereto at pages 2-1 through 2-6 thereof.

On April 24, 1981, petitioners filed their Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from that portion of the final judgment entered in this case on April 7, 1981. On June 15, 1982, the United States Court of Appeals for the Ninth Circuit affirmed the ruling of the United States District Court for the Central District of California, a copy of the Court of Appeals' opinion being reprinted in the Appendix, at pages 1-1 through 1-17.

The Evidence

Having been successful on three of their originally asserted 22 claims against six of the original 32 defendants, for a total recovery of $33,350 in damages, the attorneys for the respondents brought on a "Motion for Reasonable Attorneys Fees and Costs" before the District Court on December 1, 1980 (Appendix, pages 5-1 through 5-105).

The motion consisted of points and authorities and an affidavit from each of the two attorneys (Roy Cazares and Gerald Lopez) who represented the respondents during the course of the subject litigation. The motion made no reference to the customary hourly rate of either of the two aforesaid attorneys charged by either of them at any time during the course of the subject litigation. No evidence was ever submitted to the District Court on this point.

On January 7, 1981, the attorneys for petitioners filed their response to the aforesaid motion for attorneys's fees

(Appendix, pages 6-1 through 6-140). In their response, petitioners pointed out, inter alia, that the hours shown by one of the two appellees' attorneys (Lopez) was defective in that the hours were not properly itemized.

On or about January 8, 1981, the respondents filed an affidavit by a non-involved attorney (Robert L. Winslow) in support of their motion for attorney's fees (Appendix, pages 7-1 through 7-8). This attorney set forth what he believed to be the present reasonable value of the services of Messrs. Cazares and Lopez, the attorneys for the respondents. He did not say that he personally knew either of the attorneys for the respondents, or that he had ever seen any of their work. Furthermore, Mr. Winslow's affidavit set forth his own expertise in areas specifically other than the civil rights litigation area involved in the instant matter. His affidavit was the only affidavit in support of attorney's fees filed by the attorneys for the respondents, other than their own.

On or about January 8, 1981, Gerald Lopez, one of the attorneys for the appellees, filed his "Supplemental Affidavit" in support of his attorney's fees, itemizing for the first time his asserted time and services (Appendix, pages 8-1 through 8-57). Among other things, Mr. Lopez's affidavit, when compared with that of his co-counsel, Mr. Cazares, disclosed numerous hours of duplicated time, including travel time, all of which appellees' attorneys sought compensation for at a non-reduced rate.

On January 14, 1981, petitioners filed their "Supplemental Memorandum of Points and Authorities in Response to Plaintiffs' Motion for Attorney's Fees" (Appendix, pages 9-1 through 9-12).

The Rulings Below

On April 3, 1981, the District Court entered its findings of fact and conclusions of law, which stated without further explanation: (1) that the subject matter presented complex issues of law; (2) that respondents' counsel demonstrated skill and experience in their handling of the case; (3) that many attorneys within the community would have been reluctant to institute the subject action (although there was absolutely no support for such a finding any place in the record); and (4) that the amount of time expended by respondents' counsel in conducting the subject litigation was both reasonable and reflected sound legal judgment. The District Court then awarded respondents' counsel attorneys fees at the requested rate of $125.00 per hour for every minute of time submitted by them to the Court. There was no reduction in the fee award to reflect duplicated time between the two respondents' attorneys, travel time, or time spent litigating unsuccessful claims against defendants who were found by either the court or jury to have no liability to anyone. The effect of such an award was to grant to respondents' counsel, to the penny, every cent they sought by way of attorney's fees as reflected by their submitted time records.

The District Court specifically did not reflect in its Findings and Conclusions that it had considered _any_ of the arguments raised by petitioners in their aforesaid documents filed in opposition to the request for attorneys fees, nor did the District Court say or even hint in its Findings and Conclusions that it had considered _any_ factors relevant under standard authorities in the award of attorneys fees. The District Court did not refer, either directly or obliquely, to any such authorities in making its award.

Among the things apparently not considered by the District Court in assessing attorneys fees, since the record is silent in this regard, were the following factors:

(1) The preclusion of other employment by the attorney due to acceptance of the case;

(2) The customary fee;

(3) Whether the fee is fixed or contingent;

(4) Time limitations imposed by the client or the circumstances;

(5) The amount involved and the results obtained;

(6) The experience, reputation, and ability of the attorneys;

(7) The nature and length of the professional relationship with the client; and

(8) Awards in similar cases.

On June 15, 1982, the United States Court of Appeals for the Ninth Circuit issued its Opinion of this matter (Appendix, pages 1-1 through 1-17), affirming the judgment of the District Court below. In its opinion, the Ninth Circuit, while relying on **Johnson v. Georgia Highway Express, Inc.**, 488 F.2d 714, 719 (5th Cir. 1974), adopted by the Ninth Circuit in **Kerr v. Screen Extras Guild, Inc.**, 526 F.2d 67 (9th Cir. 1975), said that neither **Johnson** nor **Kerr, supra**, requires that the District Court specifically discuss any or all of the twelve factors set forth in **Johnson** in exercising its discretion with respect to an award of attorney's fees. Those twelve factors are:

(1) The time and labor required;

(2) The novelty and difficulty of the questions;

(3) The skill requisite to perform the legal services properly;

(4) The preclusion of other employment due to acceptance of the case;

(5) The customary fee;

(6) The contingent or fixed nature of the fee;

(7) The limitations imposed by the client or the case;

(8) The amount involved and the results obtained;

(9) The experience, reputation and ability of the attorneys;

(10) The undesirability of the case;

(11) The nature of the professional relationship with the client; and

(12) Awards in similar cases.

Rather, the Ninth Circuit held that, while both **Kerr** and **Johnson, supra,** remained the law of the Ninth Circuit, that the District Court in the instant matter had met its burden under the aforesaid decisions by discussing only a very few of the determining factors which the opinions in both **Johnson** and **Kerr, supra**, said should be discussed in order to come to a proper (and reviewable) decision regarding the award of attorneys fees.

A second major point raised by the opinion of the Ninth Circuit herein was that there was no need to reduce the award of attorneys fees to the respondents simply because they succeeded on fewer than all of the original claims. As will be discussed at length hereafter, the instant decision by the Ninth Circuit is not only at odds with existing case law in other circuits, but also failed to take into consideration that all of the respondents failed on all of their claims against most of the parties against whom they originally brought suit. In fact, the respondents' attorneys were generously recompensed for all time spent suing individuals against whom they recovered not one cent on any claim whatsoever. The District Court failed to discuss this issue. The Ninth Circuit apparently did likewise, without any finding that litigation against individuals unsuccessfully sued by the appellees was in some way necessary or related to those few claims or those few defendants on which and against whom the respondents did manage to prevail.

REASONS FOR GRANTING THE WRIT

I

Certiorari Should Be Granted To Resolve Conflicts In Principle Among The Lower Courts

The issue in this case is not whether a trial court has the power to exercise its discretion in the award of attorneys fees under the Civil Rights Attorneys Fees Act (42 USC 1988). Obviously it has. Rather, the issue is whether district courts within a single circuit (the Ninth) have the power to make such attorneys fees awards, (a) without adequately explaining why they are so doing, (b) without adequately explaining upon what standards they relied in making such awards, and (c) without considering objections raised in opposition to the request for fees.

Each of the other eleven circuits (with the arguable exception of the Third) awards attorneys fees under the Civil Rights Attorneys Fees Act according to the standard first set forth by the Fifth Circuit in the case of **Johnson v. Georgia Highway Express**, 488 F.2d 714 (5th Cir. 1974).[1] In that case, the Fifth Circuit said that in assessing attorneys fees, the trial court should consider the following factors:

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[1] See **Copeland v. Marshall**, 594 F.2d 244, 255 (D.C. Cir. 1978); **Fortado v. Bishop**, 604 F.2d 80, 98 (1st Cir. 1979); **Prate v. Freedman**, 583 F.2d 42, 48 (2nd Cir. 1978); **Staten v. Housing Authority of the City of Pittsburgh**, 638 F.2d 599, 605 (3rd Cir. 1980); **Anderson v. Morris**, 658 F.2d 246, 249 (4th Cir. 1981); **Hampton v. Hanrahan**, 600 F.2d 600, 643 (7th Cir. 1979); **Herrera v. Valentine**, 653 F.2d 1231, 1233 (8th Cir. 1981); **Francia v. White**, 594 F.2d 778, 782 (10th Cir. 1979); **Fitzpatrick v. Internal Revenue Service**, 665 F.2d 327, 332 (11th Cir. 1982).

1. The time and labor required;

2. The novelty and difficulty of the questions;

3. The skill requisite to perform the legal service properly;

4. The preclusion of other employment by the attorney due to acceptance of the case;

5. The customary fee;

6. Whether the fee is fixed or contingent;

7. Time limitations imposed by the client or the circumstances;

8. The amount involved and the results obtained;

9. The experience, reputation and ability of the attorneys;

10. The undesirability of the case;

11. The nature and length of the professional relationship with the client; and

12. Awards in similar cases. [2]

---

[2] The Third Circuit, in addition to approving the reasoning of **Johnson, supra**, also follows the so-called "lodestar" rule under which attorney's fees are calculated by determining the number of hours to be credited to prevailing attorneys for their work and preparation of the case and the hourly rate by which they are to be compensated. After this calculation, or "lodestar," has been determined, the trial court then adjusts the fee in light of two other factors, which are the contingent nature of the case and the quality of the work performed.

Under the "lodestar" approach, the trial court first determines the number of hours reasonably spent by the prevailing attorneys on matters on which they were successful. Deductions are made from the time submitted to reflect hours spent on unsuccessful matters. After this calculation is completed, the trial court then ascertains the value of the requesting attorney's time based on that attorney's normal billing rate, taking into consideration the different rates which would reflect the different amounts of skill, expertise, and (continued)

Heretofore, the Ninth Circuit, likewise, had used the standards set forth in **Johnson, supra,** in making attorneys fees awards, after having adopted **Johnson, supra,** in 1975 in the case of **Kerr v. Screen Extra Guild, Inc.,** 526 F.2d 67, 69 (9th Cir. 1975).

Some circuits which follow **Johnson, supra**, however, have not required literal compliance with each of the **Johnson**

2/ (continued) experience possessed by different attorneys working on the same matter. The court then determines the "lodestar" by multiplying the hours spent by each attorney on a case by his or her respective hourly rate. After coming to this figure, but before making a final award, the trial court figures into this equation the contingent nature of success of the case and the extent to which any exceptionally positive or negative quality of an attorney's work requires increasing or decreasing the lodestar." A factor to be considered in making this adjustment is the amount recovered in damages as compared to the defendant's potential liability. See **Hughes v. Repko,** 578 F.2d 483 (3rd Cir. 1978).

standards in upholding awards of attorneys fees. That is, there has been no requirement that each of the twelve **Johnson** guidelines be discussed by a trial court in order to make a proper (and reviewable) award. However, it is likewise true that in those decisions in which the record does not reflect that the trial court discussed most, if not all of the **Johnson** factors, that circuit courts uniformly have required a setting forth by the trial court of a statement to the effect that it had considered the factors enumerated in **Johnson** before arriving at its decision on attorneys' fees, or that it had considered the factors set forth in the decision within its circuit which adopted **Johnson** before arriving at its decision on attorneys fees.

Thus, in no circuits which follow the **Johnson** rationale (and these would be, arguably, all except the Third) has it been sufficient for a trial court to award attorneys fees without discussing most, if not all, of the **Johnson** factors, or setting forth that it had considered the standards and guidelines of **Johnson** prior to an award of attorneys fees.

In making its award of attorneys' fees in the sum of $245,456.25, the District Court for the Central District of California, not only failed to state that it was aware of any case law on the subject, but also wholly ignored at least eight of the twelve **Johnson** factors, including: the preclusion of other employment by the attorney due to acceptance of the case, the customary fee of the attorney seeking the award of fees, whether or not the fee was fixed or contingent, the time limitations imposed by the clients or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorneys, the nature and length of the professional relationship with the client, and awards in similar cases.

All of the foregoing factors which were not considered were critical in the instant matter, in view of the fact that there was no evidence before the trial court regarding the customary fee of either of the two attorneys who handled the litigation on behalf of plaintiffs/ respondents herein, the fact that at the time they were retained for the subject litigation, they were virtually brand new attorneys and wholly untested, the fact that they recovered from the jury approximately one-tenth of the amount they demanded of defendants/petitioners in their last non-negotiable settlement demand, and the fact that they succeeded in getting judgments against only six of the 32 defendants against whom they vigorously pursued the subject litigation.

The District Court was aware of all of the foregoing, since each of these items were set forth at length in petitioners' two filed responses to plaintiffs' motion seeking the award of attorneys fees. However, the District Court's Findings of Fact and Conclusions of Law is wholly bereft of any discussion of _any_ of the objections raised in defendants'/petitioners' opposition documents, and is likewise silent regarding any consideration of either **Johnson** or **Kerr, supra**, which applied **Johnson** to the Ninth Circuit in 1975.

Yet, the Ninth Circuit has not only condoned the manner in which the trial court herein rendered its opinion, but, in addition, has stated in _its_ opinion, that what the trial court did was sufficient under **Kerr, supra**, (and by definition, therefore, under **Johnson, supra**, as well) ("Opinion", Appendix, pages 1-1 through 1-17). The record, of course, speaks for itself, and it is obvious therefrom that in no manner do the Findings of Fact and Conclusions of Law of the trial court herein satisfy the requirements of **Johnson** and **Kerr, supra**, since they neither discuss the factors enumerated therein, nor do they state that the trial court was familiar with those factors (or cases) and had considered them in reaching its decision.

A decision such as that rendered by the trial court herein, based upon such meager findings, would be grounds for a remand in every other circuit following **Johnson.** Indeed, as the record now stands, there is no way for appellants to begin to understand on what factors the District Court relied in awarding to appellees attorneys fees nearly eight times the amount their clients received from the jury in a trial involving no class of victimized persons and in which judgments for civil rights violations aggregated only $14,050.00 (spread out over eight plaintiffs). And yet, virtually without explanation--or without explanation which would suffice under the cases which the Ninth Circuit claims to be controlling--attorneys fees were awarded in a sum in excess of $245,000.

Likewise, there is no way from the record by which the petitioners can understand whether the District Court considered any part of their voluminous responses to plaintiffs'/respondents' request for attorneys fees. Therein, the petitioners raised issues such as the huge amount of duplicated time submitted by appellees' attorney, made note of the numerous hours of time spent traveling to and from court by one of the two respondents' counsel, while his partner was located less than fifteen miles from the District Court and chose not to appear, as well as the vast amount of submitted hours specifically spent litigating the instant case against defendants who were ultimately dismissed from the litigation after summary judgment, upon motion of petitioners during trial, or by the jury itself at the time of trial. No reduction in fees was made by the District Court with respect to any of these matters nor did the District Court explain how it arrived at an hourly rate of $125.00 for _all_ submitted time--an hourly rate _not_ that charged by respondents.

As to all these things the record here is silent, though, to the Ninth Circuit, sufficient. It would not be so in the remainder of the circuits in the nation.

Indeed, even the Third Circuit, which abides by the afore-described "lodestar" approach in assessing attorneys fees, has cited **Johnson, supra**, with approval in noting that:

> "We emphasize that the district court should identify the factors it considered in evaluating the reasonableness of the fee sought in order to permit meaningful review of its determination." **Hughes v. Repko**, 578 F.2d 483, 488 (3rd Cir. 1978).

In the instant matter, because of the dearth of information provided by the District Court in its Findings of Fact and Conclusions of Law (Appendix, pages 2-1 through 2-6), meaningful review has been rendered impossible.

In accord is the District of Columbia Circuit which first applied **Johnson, supra**, in the case of **Evans v. Sheraton Park Hotel**, 503 F.2d 177 (D.C. Cir. 1974). Reviewing the matter of the applicable law and standards for attorneys fees a few years thereafter, the Court noted that:

> ". . . this court has not hesitated to set aside an award of attorney's fees by a district court where the record did not fully elucidate the factors that contributed to the court's fee decision. (**Evans v. Sheraton Park Hotel**, supra, 503 F.2d at 188). Similarly, the Third Circuit has stated explicitly that in setting attorney's fees, 'failure to adhere to proper standards and to follow appropriate procedures would constitute abuse of the district court's discretion . . .' (**Lindy Brothers Builders, Inc. of Philadelphia v. American Radiator and Standard Sanitary Corp.**, 487 F.2d 161, 166 (3rd Cir., 1973))."
> **Copeland v. Marshall**, 594 F.2d 244, 253 (D.C. Cir. 1978).

The Court went on to state that:

> "We do not minimize the rather baffling array of factors which a court is required to take into consideration in setting attorney's fees in Title VII as in other types of litigation. Yet the task is not made less important by its complexity or by the

> undefined weight assigned to each of the factors involved. Instead, the wide range of discretion that has allowed a court in weighing these factors makes it all the more important that the court explicate clearly the effect of each factor and leading it to increase or decrease the award, and the relative weight it assigns to each factor in reaching a final determination. As one commentator has pointed out, a court in setting attorneys fees in public interest litigation must do more than 'preserve decorum, turn the wheel and when it stops redeem the winner's chips at the posted rates." **Copeland v. Marshall, supra**, at page 255.

Then, speaking specifically on the issue of "the posted rates" the Court noted:

> "In short, therefore, on the issue of customary fees, the trial court in this case should (1) require the submission of more complete data concerning legal fees customarily charged in this jurisdiction in a variety of settings and substantive areas of law; and (2) employ a formula such as the one we outlined in

> Part II, supra, for the computation of reasonable compensation for attorneys in Title VII cases that does not mechanistically set as its cornerstone the 'customary' and unadjusted fees charged by private attorneys in their unrelated and most highly paid lines of work."
> **Copeland v. Marshall, supra,** at page 257.

As is the case herein, the District of Columbia Circuit Court pointed out that:

> "The District Court also failed to consider whether the award of attorneys fees in this case is in line with net awards made in similar cases. (Like the factor of customary hourly fees, consideration of awards made in similar cases is prescribed in **Evans** as a guide to setting attorneys fees in Title VII (see **Evans v. Sheraton Park Hotel, supra,** 503 F.2d at 188)."
> **Copeland v. Marshall, supra,** at page 258.

The Court added that:

> "Further consideration should be given by the trial court to whether the fees charged by

> appellees' attorneys bears close relation to results achieved in the litigation and to the time and labor required in its pursuit. Appellent has forcefully contended that the investment of time by appellees' attorneys in several phases of the litigation in the present case, especially in discovery and trial preparation, was excessive and not justified by the results."
> **Copeland v. Marshall, supra,** at page 258.

In the case at hand, the District Court made no mention whatsoever of these very same arguments which were raised by petitioners' attorneys in their points and authorities contained in its response to respondents' motion for attorneys fees. Nor did the trial court herein make any mention of the fact that respondents' counsel were each neophyte attorneys when the instant litigation commenced. In **Copeland, supra,** for example, it was observed that the trial court at least took note of this issue, albeit in a rather cursory fashion. This was disapproved of by the District of Columbia Circuit:

> "The court notes that this lack of trial experience was 'offset by other factors' such as the attorneys' preparation, effectiveness, and knowledge. While this may well be the case, and though experience and age may not be the best indicia of an attorney's general ability and contribution to a case, we do not believe that the trial court's brief disposition of this matter adequately applies the factor adopted in evidence."
> **Copeland v. Marshall, supra**, at page 259.

However, the District of Columbia Circuit Court at least had something to review. In the case at hand, not only was there was precious little to review but, according to the opinion of the Ninth Circuit herein, that precious little was more than adequate under its reading of **Johnson, supra.** No other district in the United States has waived the requirements of **Johnson** in such a cavalier fashion.

Certainly, the First Circuit takes the **Johnson** guidelines more seriously and has noted that, as here:

> "If more than one attorney is involved, the possibility of duplication of effort along with the proper utilization of time should be scrutinized. The time of two or three lawyers in a courtroom or conference when one would do, may obviously be discounted. It is appropriate to distinguish between legal work, in the strict sense, and investigation, clerical work, compilation of facts and statistics and other work which can often be accomplished by nonlawyers but which a lawyer may do because he has no other help available. Such non-legal work may command a lesser rate. Its dollar value is not enhanced just because a lawyer does it (citing **Johnson**).
>
> "Once the time and labor required has been fully evaluated, the district court should apply the relevant **Johnson** criteria in

> arriving at a reasonable fee. In so doing, it would be helpful for the court to set out in the record the basis for the award and any pertinent findings of fact. (Citations.) Care obviously should be taken to avoid excessive fees. The 'normal' per hour rate in a locale is itself an artificial construct. Actual bills would frequently be lower, sometimes must lower, than the rate might indicate; on exceptional occasions they may however exceed it. While the modest Criminal Justice Act rates might allow a more mechanical application, an assumed marketplace rate is never to be applied across the board without regard to the difficulty of the work, the results achieved and all other relevant factors."
> **King v. Greenblatt**, 560 F.2d 1024 at 1027 (1st Cir. 1977).

Later that year, the First Circuit reflected on its own decision in **King, supra**, noting that therein it stated that lower courts:

> ". . . were empowered to exercise their sound discretion in setting reasonable fees, bounded by the factors mentioned in the legislative history and the ABA code of

> professional responsibility (citing **Johnson v. Georgia Highway Express**). We require district courts critically to weigh claims for attorney's fees, demanding a full and specific accounting for the time invested in the case and assessing whether that much time was necessary in light of possible duplication of effort or unnecessary use of counsel to perform non-legal work. Once time and labor have been critically evaluated, courts were to set a reasonable fee in light of the relevant criteria, taking care to avoid excessive reliance on 'normal' local rates and instead tailoring the fee to the particular case."
> **Souza v. Southworth,** 564 F.2d 609, 611 (1st Cir. 1977).

The problem which exists herein--an incomplete record making meaningful review of the District Court's decision in assessing attorneys fees impossible--also troubled the Eighth Circuit Court of Appeals which noted that not only should the **Johnson, supra,** guidelines be followed but that:

> "Moreover, the basis of the award of attorneys fees should be set forth in detail so that this court can adequately review the record. Failure of the district court to disclose the basis of its award may compel the conclusion that it has abused its discretion (citing **Johnson**)."
> **Firefighters Institute v. City of St. Louis, Missouri**, 588 F.2d 235, 242 (8th Cir. 1978).

The other circuits agree. For instance, the Fourth Circuit has noted that in assessing attorneys fees:

> "The court must fix reasonable fee awards in accordance with the standards set out in the ABA Code of Professional Responsibility, DR2-106(B) and elucidated in **Johnson v. Georgia Highway Express, Inc.**, 488 F.2d 714, 719 (5th Cir. 1974). In reaching its determination, the court must consider each relevant factor and make findings of fact detailed enough to support its conclusions."
> **Allen v. United States**, 606 F.2d 432, 436 (4th Cir. 1979).

In effect, there is virtual unanimity among the circuit courts of the United

States regarding what is required of a district court before an award of attorneys fees under the Civil Rights Attorneys Fee Act is upheld. Only the Ninth Circuit stands apart, and it does so in a most curious fashion.

Like all the other circuits, it claims to be governed by the guidelines as set forth in **Johnson, supra**. But it, and it alone, allows its district courts to reach a conclusion on attorneys fees, without mention either of **Johnson** and the relevant authorities, or without discussion of three-quarters of the factors and guidelines set forth therein. Afterwards, on review, it says that such action by its district courts satisfies the **Johnson** requirements. Clearly such would not be the case in the other circuits.

It is urged that the sheer numbers of decisions emanating from each of the other circuits indictates that the Ninth Circuit's interpretation of the **Johnson** requirements is incorrect. It is further urged that petitioners herein at least be given the key to the trial court's reasoning so that they might have some understanding of the basis for an award of attorneys fees herein in the sum of $245,456.25 after a jury trial in which damages were awarded to eight plaintiffs in the sum of $33,350.00, in which no consent or restraining orders were entered into or issued, and after which 26 of the original 32 defendants were dismissed from the case without so much as one penny awarded against them.

In addition to the foregoing, the Ninth Circuit alone, apparently believes it is proper to recompense attorneys without comment, where they unsuccessfully pursue the overwhelming majority of defendants in a case, as long as some plaintiffs succeed against some defendants on some claims during the course of the litigation.

In the instant case, eight plaintiffs sued 32 defendants and eventually recovered small sums of money against six of these defendants. Seventeen other defendants were dismissed after vigorously contested summary judgments. One defendant was dismissed by stipulation shortly after the summary judgments were granted. Another defendant was dismissed after respondents put on their case in chief at trial. The remaining nine defendants were dismissed after trial, the jury having found no liability to any of the respondents.

Even a cursory look at the time records submitted by respondents' counsel with their motion for attorneys fees discloses a tremendous number of hours spent litigating against defendants who were later found to have no liability whatsoever to their clients.

And yet, the trial court herein awarded respondents' counsel fees at the rate of $125.00 per hour for every minute they spent unsuccessfully litigating against these defendants--despite a finding that there was no triable issue of fact as to 17 of them by virtue of rendering summary judgments in their favor. The record is wholly silent as to why fees were awarded for time spent unsuccessfully pursuing this case against these defendants. There isn't even a statement to the effect that such active pursuit was necessary to advance the case with respect to the few claims on which respondents actually did prevail.

It is critical to note that the instant situation is not one merely where fees were awarded on account of multiple claims being pursued by plaintiffs against defendants, with plaintiffs eventually recovering on some of these claims, on the theory that all of the said work helped to advance plaintiffs' case. Rather, in the situation at hand, we have a district court awarding without comment princely sums of money to respondents' attorneys for time spent unsuccessfully pursuing all of their claims against most of the defendants in the within litigation.

The Opinion of the Court of Appeals herein goes to great length to indicate that such a fee award is proper within the Ninth Circuit. If so, it would be proper no place else.

Even **Northcross (Northcross v. Board of Education of Memphis City Schools,** 611 F.2d 624 (6th Cir. 1979)), cited with approval by the Circuit Court below, makes it very clear that while plaintiffs/respondents are entitled to attorneys fees for all work done on their behalf which obtains for them the relief which they sought (presumably against the defendants from whom they were claiming relief), that:

> "We therefore conclude that a uniform approach to awarding fees, with a requirement that a district court make clear and

> adequate findings of fact on the record, is necessary in order that we may discharge our statutory duty to award a 'reasonable fee.' That which is arbitrary on conclusory is not reasonable, and is not fair to either of the parties involved."
> **Northcross v. Board of Education of Memphis City Schools**, 611 F.2d 624, 636 (6th Cir., 1979).

Herein, the District Court awarded respondents fees at the rate of $125.00 per hour for all work they put in during the entirety of this litigation, including work performed pursuing defendants who were dismissed from the action, work performed defending an ancillary case and appeal, as well as work performed pursuing unsuccessful claims against those few defendants against whom they ultimately recovered a judgment. The District Court awarded these fees without comment as to why it was so doing, and, obviously, without comment as to why it was refusing to reduce respondents' fees to reflect the success which respondents actually achieved. Thereafter, in its Opinion, the Circuit Court not only affirmed the silence of the District Court in making this award, but also stated that such an award was proper under the decisions within the Circuit.

Similarly, in **Johnson v. Nordstrom-Larpenteur Agency, Inc.**, 623 F.2d 1279 (8th Cir. 1980), cert. den. 101 S.Ct. 1351, 450 U.S. 924, plaintiff filed suit on two counts under Title VII of the 1964 Civil Rights Act, but was awarded damages on only one count. The Eighth Circuit affirmed in part, and reversed in part, and remanded the action with the following instruction:

> "In redetermining the amount of fees to which appellant's attorney is entitled, the district court may, on remand, take into account appellant's limited success, including the fact that she recovered only on count 1, and on that count for only five and one-third months out of a period of 33-2/3rds months. **In Re Southwestern Bell Co.**, 602 F.2d 845, 850, n.9 (8th Cir. 1979); **Equal Employment Opportunity v. Safeway Stores**, 597 F.2d 251, 253 (10th Cir. 1979); **Hughes v. Repko**, 578 F.2d 483, 487 (3rd Cir. 1978); **Muscare v. Quinn**, 614 F.2d 577, 581 (7th Cir. 1980)."
> **Johnson v. Nordstrom-Larpenteur Agency**, 623 F.2d 1279, 1282 (8th Cir. 1980).

In the instant case, eight plaintiffs presented separate claims against 32 defendants, for a total of 256 individual claims. The jury, however, provided recovery on only 37 of these claims, and against only six of the original 32 defendants. Any fees awarded by the trial court should have taken into account this disparity between claims pressed and claims recovered upon, and defendants sued and defendants recovered against.

At the very least, the District Court should have made some finding to the effect that the unsuccessful claims somehow or in some manner advanced the ones on which respondents were successful. However, no such finding was made, as the trial court herein made no inquiry or determination, resulting in a situation where respondents recovered on 14% of their claims against 19% of the defendants sued, and yet, were awarded attorneys fees for 100% of the time they submitted on the entire case, at a rate per hour which bears no relationship to what they charged, or, apparently, to what was the going rate in the community for litigators of their experience in civil rights matters.

CONCLUSION

Wherefore, petitioners respectfully pray that a writ of certiorari be granted.

KOTLER & KOTLER
BY: JONATHAN KOTLER
Attorneys for Petitioners

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SANTOS RIVERA, JENNIE RIVERA,)
DONALD RIVERA, JEROME RIVERA,)
LEE ROY RIVERA, MARK LARABEE,)
ENRIQUE FLORES, MANUAL FLORES, JR.)
)
Plaintiffs/Appellees,)
)
vs.)
)
CITY OF RIVERSIDE, LINFORD L.)
RICHARDSON, MICHAEL S. WATTS,)
DAN PETERS, GERALD MILLER,)
ROBERT PLAIT,)
Defandants/Appellants.)
)

No. 81-5362
D.C. No. CV76-1803-MRP

Filed: June 15, 1982
PHILLIP B. WINBERRY
Clerk, U.S. Court of Appeals

OPINION

Appeal from the United States District Court for the Central District of California The Honorable Mariana R. Pfaelzer, Presiding
Argued and Submitted--March 2, 1982

Before: HUG, TANG, AND PREGERSON, Circuit Judges.

PREGERSON, Circuit Judge:

42 U.S.C. § 1988 provides: "In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985 and 1986 of this title . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

This appeal presents the question whether the amount of attorney's fees the district court awarded was reasonable under section 1988 where that amount greatly exceeded the verdict, and where the prevailing party was successful on fewer than all claims against fewer than all defendants.

Plaintiffs/appellees are Mexican-Americans who sought to vindicate their civil rights in a politically unpopular suit against the City of Riverside, the Riverside police chief, and thirty Riverside police officers.

The events out of which this lawsuit arose took place in August 1975, when appellees attended a party at a private residence in Riverside, California. The police, without a warrant, but with tear-gas and unnecessary physical force, broke up the party and arrested four of the appellees. The charges were dismissed for lack of probable cause.

Appellees sued the thirty-two defendants, alleging civil rights and pendent state tort violations.[1] The court granted summary judgment in favor of eighteen individual defendants and dismissed the claims against them.[2] After four years of discovery and two settlement conferences, a nine day trial ensued. The jury found in favor of all eight plaintiffs and against the City of Riverside and four of the individual officers on the negligence, false arrest, false imprisonment, and section 1983 claims. The jury awarded appellees total damages of $33,350.

After the trial, appellees moved for reasonable attorney's fees and costs pursuant to section 1988. The district court granted the motion and awarded $243,343.75 in attorney's fees (computed at $125 per hour, the standard rate for attorneys with comparable expertise in the civil rights area) and $2,112.50 in law clerk's fees (computed at $25 per hour).[3]

Appellants do not appeal the adverse jury verdict or the court's determination that appellees are entitled to an attorney's fees award. Appellants do, however, contend that the fee award is excessive.

DISCUSSION

In 1976, Congress enacted 42 U.S.C. § 1988 and thereby firmly established that successful civil rights plaintiffs may receive reasonable attorney's fees as part of the costs. The amount of reasonable attorney's fees is within the sound discretion of the trial court. **Kerr v. Screen Extras Guild, Inc.**, 526 F.2d 67, 69 (9th Cir. 1975), cert. denied sub nom. **Perkins v. Screen Extras Guild, Inc.**, 425 U.S. 951 (1976). The trial court's determination of a reasonable attorney's fee will not be disturbed absent clear abuse of discretion. Id. See also **Twentieth Century**

Fox Corp. v. Goldwyn, 328 F.2d 190, 221 (9th Cir.) cert. denied, 379 U.S. 880 (1964).

In **Kerr**, this court listed twelve factors for the district court to consider in setting attorney's fees awards. [4] The record must "demonstrate that the district court considered the factors established by **Kerr**." **Kessler v. Associates Financial Services Company of Hawaii, Inc.**, 639 F.2d 498, 500 (9th Cir. 1981). The district court, however, need not discuss specifically each of the twelve factors. It is sufficient if the record shows that the court considered the factors "called into question by the case at hand and necessary to support the reasonableness of the fee award." Id. at 500 n.1. (citing **Stanford Daily v. Zurcher**, 64 F.R.D. 680, 682 (N.D. Cal. 1974), aff'd, 550 F.2d 464 (9th Cir.), rev'd on other grounds, 436 U.S. 547 (1978)). See also **Manhart v. City of Los Angeles**, 652 F.2d 904, 907 (9th Cir. 1981).

The record here indicates that the court considered, applied, and discussed the **Kerr** factors necessary to support the award.[5] Having reviewed the record, we are satisfied that the district court did not abuse its discretion in awarding the attorney's fees requested.

Appellants urge this court to reduce the amount awarded because appellees "succeeded" on fewer than all of the original claims against fewer than all of the original thirty-two defendants, **Sethy v. Alameda County Water District**, 602 F.2d 894 (9th Cir. 1979), cert.

denied, 444 U.S. 1046 (1980), and because the attorney's fees were disproportionately larger than the jury verdict. **Schaeffer v. San Diego Yellow Cabs, Inc.**, 462 F.2d 1002 (9th Cir. 1972).

In **Manhart**, we construed **Sethy** and concluded that no attorney's fees "may be paid for the time spent to prepare unrelated claims on which plaintiffs did not prevail." 652 F.2d at 909, citing **Sethy**, 602 F.2d at 898 (emphasis added). We distinguished **Sethy** by pointing out that "plaintiffs [in **Manhart**] pursued several claims to remedy the same injury, gender discrimination." 652 F.2d at 909. In **Manhart**, we concluded that if all claims are related to the same injury, then the amount of attorney's fees should not be reduced for time spent on unsuccessful claims if plaintiff prevails in the ultimate goal of the lawsuit.

Like **Manhart,** the present case involves related claims brought to remedy the same injury--here, the violation of civil rights. The district court, therefore, properly awarded attorney's fees for hours expended on unsuccessful but related claims. See also **Seattle School District No. 1 v. Washington,** 633 F.2d 1338, 1349-50 (9th Cir. 1980); **Northcross v. Board of Education of the Memphis City Schools,** 611 F.2d 624, 636 (6th Cir 1979), cert. denied, 447 U.S. 911 (1980). This result is in line with Congress' unequivocal viewpoint that civil rights attorneys should be compensated "as is traditional with attorneys compensated by a fee-paying client for all time reasonable expended on a matter." S. Rep. No. 94-1011, 94th Cong., 2d Sess. 6 (1976). Traditional methods of attorney compensation based on fee-paying clients do not differentiate between successful and unsuccessful claims. See **Northcross**, 611 F.2d 636.

In passing section 1988, Congress intended to provide access to the judicial system for those who wish to vindicate civil rights violations. Reducing attorney's fees awards for unsuccessful related claims brought in good faith would militate against that policy and "would hardly further our mandate to use the 'broadest and most flexible remedies available' to us to enforce the civil rights laws if we were so directly to discourage innovative and vigorous lawyering in a changing area of the law." [6] **Northcross**, 611 F.2d at 636.

This decision is not affected by **Bartholomew v. Watson**, No. 80-3237, (9th Cir. Jan. 11, 1982), which does not refer to our earlier **Manhart** decision. **Bartholomew** was remanded because the record failed to reflect the standard the district court employed in granting the entire amount of attorney's fees requested by the prevailing party. In the present case, the record reflects that the district court applied the correct standard.

Appellants rely on **Schaeffer v. San Diego Yellow Cabs, Inc.**, 462 F.2d 1002 (9th Cir. 1972), to support their contention that the amount of attorney's fees awarded must be proportionate to the jury verdict. In **Schaeffer**, a Title

VII case, the district court declared invalid certain state laws relating to employee working conditions, refused damages for back pay, and awarded the prevailing party $600 in attorney's fees. The Ninth Circuit reversed in part, holding that certain issues were moot and that the plaintiff should receive some of the back pay that was denied. We remanded and suggested that the amount of attorney's fees "should be proportionate to the extent to which the plaintiff prevail[ed] in the suit." Id. at 1008 (emphasis added).

Schaeffer does not, as appellants suggest, prohibit an attorney's fees award disporportionate to a jury verdict. The extent to which a plaintiff has "prevailed" is not necessarily reflected in the amount of the jury verdict. Rather, the legislative history behind section 1988 demonstrates Congress' position that courts should award reasonable attorney's fees even if the rights vindicated are "nonpecuniary in nature . . . ." S. Rep. 94-1011, 94th Cong. 2d Sess. 6 (1976). **Schaeffer** does not limit the amount of attorney's fees a prevailing party may recover. That decision rests within the discretion of the district court.

We conclude that the district court did not abuse its discretion in awarding the attorney's fees requested by the plaintiffs/appellees.

AFFIRMED.

FOOTNOTES

1. The complaint alleged violations of plaintiffs' civil rights protected by the First, Fourth, and Fourteenth Amendments, and 42 U.S.C. §§ 1981, 1983, 1985(3), and 1986. In connection with said civil rights violations, plaintifffs also alleged related state law claims predicated on conspiracy, infliction of emotional distress, assault and battery, property damage, breaking and entering, malicious prosecution, defamation, false arrest, false imprisonment, lost wages, negligence, and sought damages and declaratory and injunctive relief.
2. The reason why plaintiffs initially sued thirty Riverside police officers was because plaintiffs had great

difficulty learning the identity of the officers actually involved in the incident that gave rise to the action.

3. The court reduced the original request by the amount of costs not contemplated under section 1988 (out-of-pocket office expenses) and did not apply the multiplier requested by appellees.

4. The following twelve factors were established first in **Johnson v. Georgia Highway Express, Inc.**, 488 F.2d 714, 719 (5th Cir. 1974) and adopted by the Ninth Circuit in **Kerr**:

   1. The time and labor required;
   2. The novelty and difficulty of the questions;
   3. The skill requisite to perform

the legal services properly;

4. The preclusion of other employment due to acceptance of the case;

5. The customary fee;

6. The contingent or fixed nature of the fee;

7. The limitations imposed by the client or the case;

8. The amount involved and the results obtained;

9. The experience, reputation, and ability of the attorneys;

10. The undesirability of the case;

11. The nature of the professional relationship with the client;

12. Awards in similar cases.

5. The district court carefully determined that:

   1. The action presented complex issues;

2. The amount of time expended was reasonable and reflected sound legal judgment under the circumstances;

3. The attorneys demonstrated skill and experience in handling this protracted civil rights case;

4. The action was maintained to vindicate important constitutional rights and therefore advanced the public interest.

6. This is especially true in the present case. Appellees brought suit in 1975, years before the Supreme Court declared that municipalities could be sued under section 1983. **Monell v. Department of Social Services**, 436 U.S. 658 (1978).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al.,	)
Plaintiffs,	)
v.	)
CITY OF RIVERSIDE, et al.,	)
Defendants.	)

CASE NO. CV 76-1803 MRP
Filed: April 3, 1981
Clerk, U.S. District Court
Central District of California

Entered: April 7, 1981
Clerk, U.S. District Court
Central District of California

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs' motion for the award of reasonable attorneys' fees and costs came on for hearing on January 19, 1981 before the Honorable Mariana R. Pfaelzer, United States District Judge. The Court, having heard and considered oral argument and having examined and considered the memoranda, affidavits and exhibits filed by the parties, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiffs' action presented complex issues of law in a case involving eight individual plaintiffs, eleven individual defendants and a municipal defendant.

2. Counsel demonstrated skill and experience in handling this protracted civil rights case.

3. Given the nature of this lawsuit, many attorneys within the community would have been reluctant to institute this action.

4. The Court finds the following claimed number of hours to be fair and reasonable:

Attorney Services	
Roy B. Cazares	681.25 hours
Gerald P. Lopez	1,265.50 hours
TOTAL	1,946.75 hours
Law Clerk Services	84.50 hours

5. The amount of time expended by counsel in conducting this litigation is reasonable and reflects sound legal judgment under the circumstances of this case.

6. Counsel for plaintiffs base their claimed award of attorneys' fees on an hourly rate of $125 per hour. This rate of compensation is typical of the hourly rate earned by attorneys of like experience within this judicial district.

7. The rate of $25 per hour, which counsel seek as compensation for the time expended by two law clerks, is a reasonable and customary hourly fee.

8. Plaintiffs have incurred reasonable attorneys' fees in the amount of $243,343.75 plus $2,112.50 in fees expended for law clerks. The amount of the total award is $245.456.25.

9. To the extent that any of the Conclusions of Law set forth below are deemed to be Findings of Fact, they are incorporated herein.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

1. To the extent that any of the foregoing Findings of Fact are deemed to

be Conclusions of Law, they are incorporated herein.

2. Plaintiffs maintained this civil action in order to secure the vindication of important constitutional rights. A fee award in the instant civil rights action will therefore advance the public interest.

3. No special circumstances exist which would render an award of attorneys' fees unjust.

4. Reasonable charges for services of law clerks may be properly included as part of an attorneys' fee award. **Pacific Coast Agricultural Export Association v. Sunkist Growers, Inc.**, 526 F.2d 1196, 1210 (9th Cir. 1975), cert. denied, 425 U.S. 959 (1976); **Keith v. Volpe**, 86 F.R.D. 565, 576 (C.D. Cal. 1980).

5. Plaintiffs seek reimbursement for certain expenditures made by them during the prosecution of this case. As 42 U.S.C. § 1988 does not provide for the reimbursement of such expenses, the Court declines to order their reimbursement.

6. Plaintiffs, as the prevailing party, are entitled to an award of attorneys' fees in the amount of $245,456.25 as part of the costs pursuant to the Civil Rights Attorney's Fee Act of 1976, 42 U.S.C. § 1988.

7. This award is rendered against defendants in their official capacities.

DATED: March 31, 1981

/ss/ Mariana R. Pfaelzer
Mariana R. Pfaelzer
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al., Plaintiffs, v. CITY OF RIVERSIDE, et al., Defendants.	)

CASE NO. CV. 76-1803 MRP
Filed: April 3, 1981
Clerk, U.S. District Court
Central District of California

Entered: April 7, 1981
Clerk, U.S. District Court
Central District of California

JUDGMENT

The above entitled matter came on regularly for trial on September 16, 1980, the Honorable Mariana R. Pfaelzer, United States District Judge, presiding. The jury, having heard the evidence and argument of counsel, having been instructed and having had the case submitted to them, returned with verdicts.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the following verdicts are entered as part of the judgment:

1. In favor of the plaintiff SANTOS RIVERA and against the defendant LINFORD L. RICHARDSON, for negligence, actual or compensatory damages in the amount of $50.00;

2. In favor of the plaintiff SANTOS RIVERA and against defendant MICHAEL S. WATTS, for negligence, actual or compensatory damages in the amount of $50.00;

3. In favor of plaintiff SANTOS RIVERA and against defendant CITY OF RIVERSIDE, for negligence, actual or

compensatory damages in the amount of $2,400.00;

4. In favor of plaintiff SANTOS RIVERA and against defendant MICHAEL S. WATTS, for a violation of 42 U.S.C. § 1983, actual or compensatory damages in the amount of $1,000.00, and punitive damages in the amount of $500.00;

5. In favor of the plaintiff MARK LARRABEE and against defendant CITY OF RIVERSIDE, for negligence, actual or compensatory damages in the amount of $500.00;

6. In favor of the plaintiff MARK LARRABEE and against defendant MICHAEL S. WATTS, for a violation of 42 U.S.C. § 1983, actual or compensatory damages in the amount of $50.00; and punitive damages in the amount of $100.00;

7. In favor of the plaintiff MARK LARRABEE and against defendant LINFORD L. RICHARDSON, for negligence, actual or compensatory damages in the amount of $25.00;

8. In favor of the plaintiff MARK LARRABEE and against the defendant MICHAEL S. WATTS, for negligence, actual or compensator damages in the amount of $25.00.

9. In favor of the plaintiff DONALD RIVERA and against the defendant MICHAEL S. WATTS, for a violation of 42 U.S.C. § 1983, actual or compensatory damages in the amount of $50.00, and punitive damages in the amount of $100.00;

10. In favor of the plaintiff JENNIE RIVERA and against the defendant CITY OF RIVERSIDE, for negligence, actual or

compensatory damages in the amount of $2,900.00;

11. In favor of the plaintiff JENNIE RIVERA and against the defendant MICHAEL S. WATTS, for a violation of 42 U.S.C. § 1983, actual or compensatory damages in the amount of $1,000.00, and punitive damages in the amount of $500.00;

12. In favor of the plaintiff JENNIE RIVERA and against the defendant MICHAEL S. WATTS, for negligence, actual or compensatory damages in the amount of $50.00;

13. In favor of the plaintiff JENNIE RIVERA and against the defendant LINFORD L. RICHARDSON, for negligence, actual or compensatory damages in the amount of $50.00;

14. In favor of the plaintiff DONALD RIVERA and against the defendant LINFORD

L. RICHARDSON, for negligence, actual or compensatory damages in the amount of $25.00;

15. In favor of the plaintiff DONALD RIVERA and against the defendant MICHAEL S. WATTS, for negliegence, actual or compensatory damages in the amount of $25.00;

16. In favor of plaintiff DONALD RIVERA and against the defendant CITY OF RIVERSIDE, for negligence, actual or compensatory damages in the amount of $500.00;

17. In favor of plaintiff LEE ROY RIVERA and against the defendant CITY OF RIVERSIDE, for false arrest/false imprisonment, actual or compensatory damages in the amount of $3,000.00;

18. In favor of the plaintiff LEE ROY RIVERA and against the defendant DAN

PETERS, for false arrest/false imprisonment, actual or compensatory damages in the amount of $250.00;

19. In favor of the plaintiff LEE ROY RIVERA and against the defendant CITY OF RIVERSIDE, for violation of 42 U.S.C. § 1983, actual or compensatory damages in the amount of $2,250.00;

20. In favor of the plaintiff JEROME RIVERA and against the defendant MICHAEL S. WATTS, for a violation of 42 U.S.C. § 1983, actual or compensatory damages in the amount of $50.00 and punitive damages in the amount of $200.00;

21. In favor of the plaintiff JEROME RIVERA and against the defendant CITY OF RIVERSIDE, for a violation of 42 U.S.C. § 1983, actual or compensatory damages in the amount of $2,250.00.

22. In favor of the plaintiff JEROME RIVERA and against the defendant CITY OF RIVERSIDE, for false arrest/false imprisonment, actual or compensatory damages in the amount of $3,000.00;

23. In favor of the plaintiff JEROME RIVERA and against the defendant ROBERT PLAIT, for false arrest/false imprisonment, actual or compensatory damages in the amount of $750.00, and punitive damages in the amount of $250.00;

24. In favor of the plaintiff JEROME RIVERA and against the defendant MICHAEL S. WATTS, for negligence, actual or compensatory damages in the amount of $50.00;

25. In favor of the plaintiff JEROME RIVERA and against the defendant LINFORD L. RICHARDSON, for negligence, actual or

compensatory damages in the amount of $50.00;

26. In favor of the plaintiff JEROME RIVERA and against the defendant CITY OF RIVERSIDE, for negligence, actual or compensatory damages in the amount of $500.00;

27. In favor of the plaintiff ENRIQUE FLORES and against defendant MICHAEL S. WATTS, for a violation of 42 U.S.C. § 1983, actual or compensatory damages in the amount of $50.00, and punitive damages in the amount of $200.00;

28. In favor of the plaintiff ENRIQUE FLORES and against the defendant CITY OF RIVERSIDE, for a violation of 42 U.S.C. § 1983, actual or compensatory damages in the amount of $1,500.00;

29. In favor of the plaintiff ENRIQUE FLORES and against the defendant CITY OF

RIVERSIDE, for negligence, actual or compensatory damages in the amount of $500.00;

30. In favor of the plaintiff ENRIQUE FLORES and against the defendant MICHAEL S. WATTS, for negligence, actual or compensatory damages in the amount of $50.00;

31. In favor of plaintiff ENRIQUE FLORES and against the defendant LINFORD L. RICHARDSON, for negligence, actual or compensatory damages in the amount of $50.00;

32. In favor of the plaintiff MANUEL FLORES, JR., and against the defendant GERALD MILLER, for a violation of 42 U.S.C. § 1983, actual or compensatory damages in the amount of $500.00

33. In favor of the plaintiff MANUEL FLORES, JR., and against the defendant

ROBERT L. PLAIT, for a violation of 42 U.S.C § 1983, actual or compensatory damages in the amount of $1,000.00 and punitive damages in the amount of $2,000.00;

34. In favor of the plaintiff MANUEL FLORES, JR., and against the defendant CITY OF RIVERSIDE, actual or compensatory damages in the amount of $2,000.00;

35. In favor of the plaintiff MANUEL FLORES, JR., and against the defendant GERALD MILLER for negligence, actual or compensatory damages in the amount of $500.00;

36. In favor of the plaintiff MANUEL FLORES, JR., and against the defendant ROBERT PLAIT, for negligence, actual or compensatory damages in the amount of $1,000.00;

37. In favor of the plaintiff MANUEL FLORES, JR., and against the defendant CITY OF RIVERSIDE, for negligence, actual or compensatory damages in the amount of $1,500.00.

FURTHER, on January 19, 1981, plaintiffs' and defendants' motions for reasonable attorneys' fees and costs came on regularly for hearing before the Honorable Mariana R. Pfaelzer, United States District Judge. Plaintiffs appeared by and through their counsel of record Gerald P. Lopez and Roy B. Cazares. Defendants appeared by and through their counsel of record, Jonathan Kotler and Patricia Kotler. The Court, having examined and considered the papers filed by the parties, having heard the argument of counsel, and having caused to be made and filed herein its written Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiffs' motion for reasonable attorneys' fees and costs is hereby granted pursuant to 42 U.S.C. § 1988. Defendants are ordered to pay plaintiffs' reasonable attorneys' fees in the amount of $245,456.25.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants' motion for attorneys' fees and costs is denied.

DATED: March 31, 1981

/ss/ Mariana R. Pfaelzer
MARIANA R. PFAELZER
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al.,)
)
Plaintiffs,)
)
v.)
)
CITY OF RIVERSIDE, et al.)
)
Defendants.)

No. CV 76-1803-F

Filed: January 10, 1978
Clerk, U.S. District Court
Central District of California

MEMORANDUM OPINION AND ORDER

Twenty-three of the thirty-two defendants named in this case have moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The defendants filed affidavits in support of their motions and the plaintiffs submitted counter affidavits in response. The defendants' motions were first heard on September 26, 1977. Additional affidavits were subsequently filed by both plaintiffs and defendants and the matter was taken under submission by the court. For the reasons stated below the motions will be granted as to 17 of the moving defendants, and denied as to 6 others.

It is a well-established rule that on a motion for summary judgment the moving party bears the burden of demonstrating the absence of any genuine issue of fact and of establishinq that he is entitled to prevail as a matter of law. **Jones v. Halekulani Hotel, Inc.**, 557 F.2d 1308 (9th Cir. 1977). Therefore, in considering the instant motions, the court must view the allegations of the complaint and the facts supporting them in the light most favorable to the plaintiffs. Nevertheless, in order to overcome a defendant's summary judgment motion, it must appear that the facts, when so construed, support a viable legal theory which would entitle the plaintiffs to a judgment against that defendant for the acts complained of. **Mutual Fund Investors v. Putnam Management Co.**, 553 F.2d 620, 624 (9th Cir. 1977). Bearing these principles in mind, and having carefully considered the affidavits and arguments presented by both sides, the court has made the following determinations:

1. As to the defendants Callow and R. Boyer the plaintiffs do not oppose the motions for summary judgment. These

officers were not present at the scene of the incident which forms the major basis for the plaintiffs' complaint.

2. As to the defendants Albee, Arellano, M. Boyer, Carroll, Conner, Dana, Felcher, Gann, Grutzmacher, Haywood, Henery, Nissen, Qualls, Shively and Tennell, the court finds that there are no genuine issues of fact remaining to be litigated in this case. These defendants were present at the scene of the incident, and several of them entered the Rivera residence in response to orders from their commanding officer. However, their affidavits establish that they did not have any physical or verbal contact with any of the plaintiffs, did not participate in the arrest or search of any of the plaintiffs, and did not personally engage in any conduct which

violated the plaintiffs' civil rights. The responsive affidavits filed by the plaintiffs are not sufficient to overcome this showing because none of the actions of these individual defendants which are referred to in the affidavits rise to the level of constitutional violations.

Furthermore, in their affidavits these defendants all deny having participated in any manner in a conspiracy or in any concerted action to violate the civil rights of the plaintiffs. Even accepting the broadest view of the scope of the schemes and conspiracy allegations of plaintiffs' complaint, these defendants have sworn that they were not a part of any such activity. No triable issue on this point is raised by the mere fact that these defendants were present at the time of the incident in question, or that they made arrests or conducted searches of persons other than the plaintiffs. Also, no reasonable inference of an unlawful conspiracy can be drawn from the fact that some of these defendants conferred with each other before writing reports about the incident or that their reports were similar in content.

Likewise, plaintiffs' argument that there are genuine issues as to possible negligent violations of their civil rights by these defendants must fail. Cf. **Navarette v. Enomoto**, 536 F.2d 277 (9th Cir. 1976), cert. granted, 429 U.S. 1060 (1977). The defendants all deny having seen any violations of civil rights by other officers, and they deny withholding information or exculpatory evidence. Again, no triable issue is raised by their mere presence at the scene. Cf. **Byrd v. Brishke**, 466 F.2d 6 (7th Cir. 1972), relied on by plaintiffs to support their argument on this point. In **Byrd** the Court of Appeals reversed a directed verdict in favor of three police officers who, it was established, were present in the back room of a bar with a dozen other officers who surrounded the plaintiff as he was severely beaten. In such a case, a reasonable question as to negligence is clearly raised by mere presence, since awareness of the civil rights violation taking place is obvious. There is no indication whatsoever that such an extreme situation is involved in this case.

3. Regarding the other six moving defendants it appears to the court that

there are material factual issues which cannot be resolved on the motions for summary judgment.

a. As to the defendants Smith and Taulli the plaintiffs point to answers to interrogatories indicating that these two officers assisted in the follow-up investigation which led to the filing of criminal complaints against some of the plaintiffs. Part of the alleged civil rights violations covered by plaintiffs' complaint concern these charges. Since the affidavits filed by these defendants do not address their participation in the investigation and any role they may have played in recommending prosecution of the plaintiffs, they are insufficient to support a summary judgment at this time.

b. Affidavits submitted by the plaintiffs regarding the defendants Eltringham and Olsen raise a genuine issue as to possible civil rights violations by those defendants as a result of their surveillance of the Rivera residence from a police helicopter on the night in question. The defendants deny direct physical contact with any of the plaintiffs, but their affidavits do not address the plaintiffs' allegations of harassment and invasion of privacy. It also appears that there is a material factual dispute regarding the claims of these defendants that they issued a dispersal order from their helicopter before any officers entered the Rivera residence. Therefore, their motions for summary judgment cannot properly be granted.

c. As to the defendant Richardson there remains an issue of possible liability based on his allegedly having ordered a "stake-out" of the Rivera residence and his request for additional officers to report to the scene. The affidavits submitted by this defendant do not refer to these orders.

d. There are conflicting affidavits on the question of whether the defendant Brading personally participated in the arrest and booking of the plaintiff Jerome Rivera. Such a conflict must be resolved against the defendant on this motion for summary judgment and his motion will therefore be denied.

IT IS THEREFORE ORDERED that the motions for summary judgment filed on

August 5, 1977 are granted as to the following defendants:

Richard Albee
Peter Arellano
Mark Boyer
Richard Boyer
George Callow
Gerald Carroll
Thomas Conner
Richard Dana
Ernest Felcher
Daniel Gann
Fred Grutzmacher
Robert Haywood
Ivan Henery
Gary Nissen
Kenneth Qualls
John Shively
James Tennell

As to the following defendants, the motions for summary judgement filed on August 5, 1977 are denied:

James Brading
Donald Eltringham
Jon Olsen
Linford Richardson
Michael Smith
Don Taulli

IT IS FURTHER ORDERED that the clerk forthwith serve copies of this memorandum opinion and order by United States mail upon counsel for the parties appearing in this action.

Dated this 9th day of January, 1978.

/ss/ Warren J. Ferguson
WARREN J. FERGUSON
United States District Court

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al.,
Plaintiffs,
v.
CITY OF RIVERSIDE, et al.
Defendants.

No. CV 76-1803-F

Filed: January 12, 1978
Clerk, U.S. District Court
Central District of California

Entered: January 13, 1978
Clerk, U.S. District Court
Central District of California

JUDGMENT

Pursuant to the memorandum opinion and order filed in this case on January 10, 1978,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that judgment be entered in favor of the the following defendants, dismissing plaintiffs' complaint with prejudice:

Richard Albee
Peter Arellano
Mark Boyer
Richard Boyer
George Callow
Gerald Carroll
Thomas Conner
Richard Dana
Ernest Felcher
Daniel Gann
Fred Grutzmacher
Robert Haywood
Ivan Henery
Gary Nissen
Kenneth Qualls
John Shively
James Tennell

IT IS FURTHER ORDERED that the clerk forthwith serve copies of this judgment by United States mail upon counsel for the parties appearing in this action.

Dated this 12th day of January, 1978.

/ss/ Warren J. Ferguson
WARREN J. FERGUSON
United States District Court

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Telephone: (714) 233-6581
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al.,

Plaintiffs,

vs.

CITY OF RIVERSIDE, et al.,

Defendants.

No. CV 76-1803-MRP

NOTICE OF MOTION AND MOTION BY PLAINTIFFS FOR REASONABLE ATTORNEYS FEES AND COSTS

TO: THE DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on Monday, December 15, 1980, or as soon thereafter as counsel may be heard in the Courtroom of the Honorable Marianna R. Pfaelzer, District Judge, plaintiffs will move this Court for Attorneys Fees and Costs pursuant to 42 U.S.C. 1988.

Said motion will be based on the attached Memorandum of Law and the accompanying Affidavits.

DATED: 12/1/80

Respectfully submitted,

/ss/Roy B. Cazares
ROY B. CAZARES

INTRODUCTION

This memorandum or points and authorities will inform the court of the issues and authority relevant to an award of attorneys' fees in the present case. Roy Cazares and Gerald Lopez, plaintiffs' attorneys, have dedicated themselves to this civil rights action for the last five years. Having at last prevailed on the merits, plaintiffs now desire that the court award attorneys' fees pursuant to 42 U.S.C. 1988--the Attorney's Fees Awards Act of 1976. This memorandum will demonstrate the compelling need for awards of attorneys' fees in civil rights litigation, and the propriety of the requested award in this case.

I.

PLAINTIFFS' ENTITLEMENT TO AN AWARD OF FEES UNDER 42 U.S.C. 1988

42 U.S.C. 1988 provides, in pertinent part:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985 and 1986 of this title..., the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fees as part of the costs.

Section 1988 vests the court with the disretion to award attorneys' fees in this case. Although the statute fails to specify when an award of fees is appropriate, the legislative history firmly commands that "a party seeking to enforce the rights protected by the statutes covered by S. 2278 [1988] 'should ordinarily recover attorneys' fees unless special circumstances would render such an award unjust' **Newman v. Piggie Park Enterprises, Inc.**, 390 U.S. 400, 402 (1968) quoted in S. Rep. No. 94-1011, 94th Cong. 2nd Sess. 4 (1976). A brief overview of the circumstances which led to the enactment of section 1988 will help to explain the adoption of the stringent standard of **Newman v. Piggie Park.**

Section 1988 was enacted in response to the Supreme Court's decision in **Alyeska Pipeline Service Co. v. Wilderness Society,** 421 U.S. 240 (1975). In **Alyeska,** the Court disapproved a line of lower court cases in which attorneys' fees had been granted on a private attorney general theory in civil rights actions based on the Reconstruction statutes, 42 U.S.C. 1981-1983 and 1985-

1986. The lower courts had justified the awards on two grounds: first, that the civil rights actions furthered the public interest, and second, that since fees were specifically provided in the more modern civil rights statutes, it would be anomalous to deny them in cases brought pursuant to the Reconstruction amendments. *See*, Comment, *Attorney's Fees in Damage Actions Under the Civil Rights Attorney's Fees Awards Act of 1976*, 47 UNIV. OF CHI. L. REV. 332 (1980). **Alyeska** rejected this newly created exception to the so-called "American Rule" against awarding attorney's fees to prevailing parties because the exception constituted a judicial invasion of "the legislature's province." **Alyeska, supra**, at 271. Congress' response was extraordinarily swift and unequivocal. It enacted the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988, allowing the award of attorney's fees to prevailing parties in suits to enforce the Reconstruction statutes.

Viewed in this context, section 1988 clearly embodies Congress' commitment to the enforcement of civil rights. The legislative history demonstrates Congress' concern that, in many instances, important rights would not be vindicated if counsel could not be employed to undertake civil rights litigation. By permitting fee-shifting, Congress sought to ensure the continued litigation of civil rights actions -- to guarantee that "civil rights laws are not to become mere hollow pronouncements which the average citizen cannot enforce..."

S. Rep. No. 94-1011, 94th Cong., 2nd Sess. 6 (1976).

The Ninth Circuit has followed the congressionally-approved standard of **Newman v. Piggie Park.** In **Sethy v. Alameda County Water District,** 602 F.2d 894, 897 (9th Cir. 1979), the court recognized that "Congress plainly intended that successful plaintiffs 'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.' S. Rep. No. 94-1011, 94th Cong. 2nd Sess. 4, reprinted in U.S. Code Cong & Admin News pp. 5908, 5912 quoting **Newman v. Piggie Park Enterprises,** 390 U.S. 400 (1968)." Courts in the Ninth Circuit have likewise acknowledged the importance of attorneys' fees as a means of encouraging civil rights actions. In **Keith v.**

Volpe, No. CV-72-355-HP 6 (C.D. Cal., March 31, 1980), a 1983 action decided in the Central District of California, Judge Pregerson noted that "[c]ivil rights plaintiffs who, more often than not, bear the burdens that accompany poverty and minority status in our society, should be encouraged to use the federal courts to avail themselves of the promise of equality that abides in the Constitution."

Plaintiffs submit that an award of fees in this case is appropriate. Both the legislative history and the cases in this Circuit support the necessity of such an award as a means of fulfilling important policies reflected both in section 1988 and in the Reconstruction statutes generally.

II.

RETROACTIVITY

Although the present case commenced prior to the enactment of section 1988, plaintiffs' attorneys should be compensated for the entire period during which they rendered legal services. Section 1988 applies retroactively to all cases which were pending in 1976, the year of its adoption. In **Bradley v. School Board of City of Richmond**, 416 U.S. 696 (1974), the Supreme Court held that an attorneys' fees statute should be retroactively applied to cases pending when the statute is passed. The Court based its holding on the principle that "a court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory discretion or legislative history to the contrary." **Bradley, supra**, at 711.

The legislative history of section 1988 leaves no doubt that section 1988 incorporates the rule in **Bradley**. The House Report, which specifically addresses the issue of retroactivity, states:

> In accordance with the applicable decisions of the Supreme Court, the bill is intended to apply to all cases pending on the date of the enactment as well as all future cases. **Bradley v. Richmond School Board**, 416 U.S. 696 (1974) in H.R. Rep. No. 94-1558, 94th Cong. 2nd Sess. 4, n.6 (1976).

The Ninth Circuit, moreover, in **Stanford Daily v. Zurcher**, 550 F.2d 464 (9th Cir. 1977), expressly approved the retroactivity of section 1988 in affirming an award of fees which had been made by the District Court prior to the enactment of section 1988 in **Stanford Daily v. Zurcher**, 64 F.R.D. 680 (N.D. Cal. 1974). Thus, the rule of retroactivity approved both in the legislative history and by this Circuit supports plaintiffs' claim that all services rendered in this case should be compensated.

III

FACTORS TO BE CONSIDERED BY THE COURT IN DETERMINING THE AMOUNT OF FEES TO BE AWARDED

The amount of fees to be awarded pursuant to section 1988 is another issue which was addressed by Congress in the legislative history of the Act. The Senate Report states:

> It is intended that the amount of fees awarded under S. 2278 [1988] be governed by the same standards which prevail in other types of equally complex Federal litigation, such as antitrust

> cases and not be reduced because the rights involved may be non-pecuniary in nature. ... In computing the fee, counsel for prevailing parties should be paid, as is traditional with attorneys compensated by a fee-paying client, "for all time reasonably expended on a matter." S.Rep. No. 94-1011, 94th Cong., 2nd Sess. 6 (1976) (emphasis added).

Courts confronted with the task of determining the amount of fees to be awarded generally begin with the calculation of a base figure which reflects the amount of time reasonably expended. Then, in accordance with the legislative history, they adjust the award so that it comports with the standards of other "equally complex Federal litigation, such as antitrust cases." Plaintiffs will likewise address the issues in this sequence.

A. DETERMINATION OF A REASONABLE HOURLY RATE

An attorney's reasonable hourly rate serves as a basis for subsequent calculations leading to an award of fees. The legislative history of section 1988 suggests that the reasonable hourly rate should be based on a consideration of twelve factors. These factors were set forth in **Johnson v. Georgia Highway Express**, 488 F.2d 714 (5th Cir. 1974), a title VII case which was expressly approved in the legislative history of section 1988. See S.Rep. No. 94-1011, **supra**, at 6. According to **Johnson**, these factors are: time and labor required; novelty and difficulty of the questions; skill requisite to perform the legal service properly; preclusion of other employment by the attorney due to acceptance of the case; customary fee; whether the fee is fixed or contingent; amount involved and results obtained; experience, reputation and ability of the attorneys; undesirability of the case; nature and length of the professional relationship with the client and awards in similar cases.

The **Johnson** factors serve as a basis for evaluation of a reasonable hourly rate in this case. As the remainder of this memorandum and the affidavits of Roy Cazares and Gerald Lopez demonstrate, the present case required enormous expenditures of time and demanded legal arguments on complex and untested theories. The contingent nature of the fees, and the favorable verdict obtained also militate in favor of a generous estimate of the reasonable hourly rate.

Finally, the skill and reputation of plaintiffs' counsel must be recognized. Wtih regard to this factor, the Johnson court stated:

> Most fee scales reflect an experience differential with the more experienced attorneys receiving larger compensation. An attorney specializing in civil rights may enjoy a higher rate for his expertise than others, providing his ability corresponds with his experience. Longevity per se, however, should not dictate the higher fee. If a young attorney demonstrates the skill and ability, he should not be penalized for only recently being admitted to the bar. **Johnson, supra**, at 718-19.

The professional conduct of Messrs. Cazares and Lopez in this case reflects a thorough knowledge of civil rights as well as complete command of litigation skills. These are the factors which must be focused upon in evaluating the experience, reputation and ability of plaintiffs' counsel. Plaintiffs therefore contend that, applying the **Johnson** factors to this case, this Court is justified in awarding $125.00 per hour as a reasonable hourly rate.

B. THE PROPRIETY OF A MULTIPLIER

The reasonable hourly rate multiplied by the number of hours expended provides a base figure, or lodestar. Once the lodestar has been fixed, it is appropriate for the Court to award successful plaintiffs a multiplier of the lodestar--that is, the court may double, triple or quadruple the lodestar. The legislative history of section 1988 supports the propriety of a multiplier, as is evidenced by its specific reference to fee awards in anti-trust cases. S.Rep. No. 94-1011 **supra** at 6. In the leading anti-trust attorneys' fees case of **Lindy Brothers Builders of Philadelphia v. American Radiator and Sanitary Corp.**, 487 F.2d 161 (3d Cir. 1973), the court suggested that the multiplier be determined in light of both the contingent nature of success and the quality of the attorneys' work. The court emphasized that attorneys' fees cannot properly be determined merely by multiplying the hourly rate for each attorney times the number of hours devoted to the case.

The contingency and quality factors suggested by **Lindy** weigh heavily in favor of a multiplier in the present case. The **Lindy** court noted the special significance of the contingency factor "where the attorney has no private agreement that guarantees payment even if no recovery is obtained..." **Lindy**

supra at 168. In this case plaintiffs' counsel had no fee agreement. Had the jury returned a verdict for defendants, these attorneys would have received no compensation for their five years of labor.

The quality factor likewise supports a multiplier. The **Lindy** court stated that "[i]n evaluating the quality of an attorney's work in a case, the district court should consider the complexity and novelty of the issues presented, the quality of the work that the judge has been able to observe, and the amount of recovery obtained." **Lindy supra** at 168. This court is well-aware of the complexity of legal issues presented and the high quality of representation in the present case. In considering the amount of recovery, plaintiffs urge the court to consider both its pecuniary and non-pecuniary implications. Because the verdict in this case resulted in the successful assertion of constitutional rights, a goal endorsed by Congress in the legislative history, it must be valued in terms which exceed the monetary damages awarded. All of these elements justify plaintiffs' request for a multiplier of two in the present case.

The reasonableness of plaintiffs' request is supported by other cases in which a multiplier was granted. A brief review of decisions in anti-trust cases and then in public interest cases will inform the Court as the range of possible multipliers. In **Lindy**, for example, the district court, on remand, doubled the amount obtained by mere application of the hourly rate in order to account for the contingency and quality factors. 382 F.Supp. 999, 1024 (E.D. Pa. 1974). Attorneys in **Lindy** were awarded a fee of $1,134,855.00 (or $229/hour for 6,000 hours) though criminal prosecutions had preceded the filing of the complaint, though the suit was ultimately settled, and though petitioning counsel received an additional $861,000.00 through private 33.3% contingent fee contracts.

In **In re Gypsum Cases**, 386 F.Supp. 959 (N.D. Cal. 1974), Judge Zirpoli relied on the **Lindy** factors and multiplied the hourly rate by three. The court underscored the role of the multiplier in encouraging private enforcement of anti-trust laws.

In **Philadelphia v. Charles Pfizer and Co. Inc.**, 345 F.Supp. 454 (S.C. N.Y.

1972), plaintiffs' counsel were awarded $600,000.00 or an average of $300.00 per hour. This fee was awarded despite the fact that most of the hours were devoted to fairly uncomplicated work, some of which was said to be duplicative, unwise or unnecessary. In **Arenson v. Board of Trade of City of Chicago,** 373 F.Supp. 1349 (N.D. Ill. 1974), a multiplier of four was awarded. Finally, in an unpublished opinion in **Goldstein v. Alodex Corp.,** Civ. No. TI - 1857 (E.D. Pa., Dec. 7, 1973), a multiplier of five was awarded.

Congress, in suggesting that antitrust multipliers be the model in awards pursuant to section 1988, was not breaking new ground. In many earlier public interest cases decided in this Circuit, multipliers had been awarded based on the same factors emphasized in **Lindy** -- contingency of the case and the quality of representation. See, e.g., **Coalition for Los Angeles Planning in the Public Interest v. Board of Supervisors**, L.A. Sup. Ct. No. C-63218 (1976) (multiplier of two in environmental lawsuit); **Serrano v. Priest**, No. C-933-254 (L.A. Co. Sup. Ct. April 1975) (multiplier of two in school financing case); **Davis v. County of Los Angeles**, 8 EPD ¶9444 (C.D. Ca. 1974) (bonus of $7,193.42 in employment discrimination case); **WACO v. Alioto**, C-70-1335-WTS (Findings and Recommendations Re Attorneys' Fees, September 19, 1974) (multiplier of two and multiplication again by a 50% factor in section 1983 employment discrimination case). Thus, the courts of this

Circuit have recognized that multipliers, just as they encourage private enforcement of anti-trust laws, further the vindication of important rights and policies in public interest cases. To maximize the impact of attorneys' fees acts, the fees awarded "should be large enough to make the case desirable despite the risk of loss." **Palmer v. Rogers**, 10 E.P.D. ¶10,499 at 6131 (D.D.C. 1975)(Title VII action).

Courts in the Ninth Circuit, in accordance with the legislative history of section 1988 and with the decisions in other public interest cases, have, moreover, awarded multipliers and bonus awards in cases brought under the Civil Rights Attorney's Fees Awards Act. In **Stanford Daily v. Zurcher**, 64 F.R.D. 680 (N.D. Cal. 1974), the district court awarded a bonus of $10,000.00; this award, as noted above, was later approved by the Ninth Circuit as consistent with section 1988. **Stanford Daily v. Zurcher**, 550 F.2d 464 (9th Cir. 1977). More recently, in **Keith v. Volpe**, No. CV-72-335-HP (C.D. Cal., March 31, 1980), Judge Pregerson reaffirmed the **Lindy**, method of computing reasonable attorney's fees awarding plaintiffs a multiplier of 3.5. Such a multiplier was intended to reflect the contingent nature of the case, the quality of counsel's efforts, the effect of the delay between the time services were rendered and the date in which the order determining fees was entered, and finally, the impact of inflation. **Keith v. Volpe, supra** at 27.

Plaintiffs contend that the use of a multiplier is appropriate in this case. It is justified by the legislative history, by similar awards in public interest and anti-trust cases, and by awards granted pursuant to section 1988 within the Ninth Circuit. Moreover, the two factors which weigh most heavily in favor of a multiplier -- quality of representation and the contingent nature of success -- compel such an award in the present case. Finally, a multiplier is appropriate because it reinforces the policies of section 1988 by providing attorneys with an incentive to litigate legitimate civil rights claims even when the theoretical and practical obstacles are great.

C. COMPENSATION FOR TIME SPENT IN APPLYING FOR FEES

Plaintiffs seek to recover attorneys' fees for time spent by their counsel in preparing and presenting this motion. The propriety of such an award becomes evident when viewed in light of the legislative history and the policies of section 1988. The Senate Report recognized that "civil rights laws depend heavily upon private enforcement, and fee awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate the important Congressional policies which these laws contain." S.Rep.No. 94-1011, 94th Cong. 2nd Sess. 2 (1976). The "essential remedy" sought to be afforded by section 1988 will be significantly diluted if attorneys are not compensated for time spent in applying for fees. See, e.g., **Prandini v. National Tea Co.**, 585 F.2d 47, 53 (3d Cir. 1978).

Much time has been devoted to preparing the motion for fees in this case. Plaintiffs' counsel, in addition to establishing the legal basis for their entitlement to fees, have had to sift through records and accounts generated during the last five years. Moreover, there is no assurance that further litigation relating to the matter of fees will not ensue. As the court in **Stanford Daily v. Zurcher**, 64 F.R.D. 680, 684 (N.D. Cal. 1974) noted, if such work were not compensated, it "would allow parties to dilute the value of a fees award by forcing attorneys into extensive uncompensated litigation in order to gain fees." By allowing attorneys' fees for the time spent on the fee question, this Court can prevent potential disincentives to attorneys undertaking civil rights litigation, and thus further the policies of section 1988.

D. LAWCLERK AND PARALEGAL SERVICES

Plaintiffs request the Court to include charges for law clerk/paralegal services as part of the attorneys' fees award. The Ninth Circuit has approved the inclusion of these charges in fee awards. See, e.g., **Pac. Coast Agr. Export Assn' v. Sunkist Growers, Inc.**, 526 F.2d 1196, 1210 (9th Cir. 1975); cert. den. 425 U.S. 959 (1976)(award of fees for work of legal assistants in anti-trust action); **Keith v. Volpe**, No. CV-72-355-HP 24 (C.D.Cal., March 31, 1980)(section 1983 action). In allowing law clerk and paralegal charges in **Keith**, Judge Pregerson recognized that lawclerks and paralegals provide necessary services which, were they performed by attorneys, would be more costly. On this basis, plaintiffs have submitted law clerk time as part of their motion for fees.

E. COSTS AND EXPENDITURES

Plaintiffs contend that travel expenses necessarily incurred during the course of litigation should be awarded. In **Keith v. Volpe**, No. CV-72-355-HP 27 (1980), plaintiffs were awarded out of town travel expenses. The Court recognized that these expenditures were of the type which would ordinarily be charged to the to the client and concluded that equity required that plaintiffs counsel be reimbursed. See also, **Sprague v. Ticonic Nat'l Bank,** 307 U.S. 161, 165 (1939)(power of court to award "as much of the entire expenses of the litigation of one of the parties as fair justice to the other party will permit ...") In the present case an award of travel expenses is equally justified. Plaintiffs' attorneys, residents of San Diego, made numerous trips to Los Angeles and to Riverside in connection with the litigation. These expenses are not compensated by an award of fees and should be granted in addition to any fees awarded in this case.

IV

PLAINTIFFS ARE ENTITLED TO AN INTERIM AWARD OF FEES

Having prevailed in the instant action, plaintiffs contend that they are entitled to an interim award of fees. Plaintiff's attorneys have expended considerable time and expense over a five year period without compensation. As outlined in plaintiffs points and authorities above, the legislative history of Section 1988 clearly indicates that attorney fee awards are an important component of Congress' efforts to insure that even the poor will have access to the Courts to vindicate Constitutional rights. While Section 1988 does not provide a specific time for the awarding of attorney fees, it is reasonable to conclude that the awarding of interim fees promotes the vigilant protection of constitutional rights and promotes the public policy embodied in the Civil Rights Acts.

The Ninth Circuit, as well as other circuits, has recognized the propriety of awarding interim attorney fees. **Shaeffer v. San Diego Yellow Cabs, Inc.**, 462 F.2d 1002 (9th Cir. 1972) (description without comment by Ninth Circuit of interim fee procedure utilized by District Court); **Davis v. County of Los Angeles** , 8 FEP Cases 244, 8 E.P.D. ¶9444 (C.D. Calif. 1974) ($60,000 interim fee award made without discussion of pending appeal and without the requirement of a bond); **Peters v. Missouri Pacific R.R. Co.**, 3 E.P.D. ¶8274 (E.D. Tex. 1971) (fees awarded by District

Court, wtithout mention of pending appeal, but the existence of such an appeal is shown by appellate court decision at 483 F.2d 490 (5th Cir. 1973)). See also **Highway Truck Drivers and Helpers Local 107 v. Cohen,** 220 F.Supp. 735 (E.D. Pa. 1973) (fees awarded despite pending appeal in case under Labor Management Reporting and Disclosure Act). In **Malone v. North American Rockwell Corporation,** 457 F.2d 779 (9th Cir. 1972), the Ninth Circuit held that plaintiffs were entitled to an interim award even though they had prevailed solely on a procedural issue (the Title VII Statute of Limitations) and despite the fact that there had not been a decision on the merits. See also **Kaplan v. Iatse,** 525 F.2d 1354 (9th Cir. 1975).

Moreover, the Second Circuit has recently held in **Johnson v. University of Bridgeport**, Doc. Nos. 80-7350, 80-7374 (August 28, 1980), that an award of attorneys' fees is an integral part of the relief sought in a civil rights action and therefore the judgment is not final and appealable until they have been set by the court.

Plaintiffs assert that interim attorneys' fees in the instant case are not only proper, but said award would promote the underlying policy of Section 1988.

V

CONCLUSION

Based on the facts and points outlined above as well as in the affidavits and exhibits attached hereto, it is submitted that the amount of time expended on this case is reasonable, that the hourly rates requested are reasonable, that a multiplier or bonus is appropriate in this case, and that therefore this Honorable Court should make an award herein of $495,713.51 as follows:

Law clerk/paralegal hours	$2,112.50
Hours expended by Roy B. Cazares 692.75 hours X $125.00 per hour = $86,593.75 X multiplier of two (2)=	$173,187.50
Hours expended by Gerald Paul Lopez, 1,265.50 X $125.00 = 158.187.50 X multiplier of two (2)=	$316,375.00
Costs incurred (Exhibit C)	$ 4,038.50
TOTAL AWARD REQUESTED	$495,713.51

DATED: 12/1/80

Respectfully submitted,

/ss/Roy B. Cazares
ROY B. CAZARES

DATED: 12/1/80

Respectfully submitted,

/ss/Gerald P. Lopez
GERALD P. LOPEZ

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CAZARES & TOSDAL
Attorneys at Law
225 Broadway, Suite 1352
San Diego, Ca 92101
Telephone: (714) 233-6581
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al.,

Plaintiffs,

vs.

CITY OF RIVERSIDE, et al.,

Defendants.

NO. CV 76-1803-MRP

AFFIDAVIT OF GERALD P. LOPEZ RE: AMOUNT OF ATTORNEYS FEES REQUESTED

GERALD P. LOPEZ, being duly sworn, deposes and says:

1. I am co-counsel for the plaintiffs in the above-captioned action. I make this affidavit in order to bring to

the Court's attention certain facts which are relevant to the amount of fees requested in the accompanying application.

2. The memorandum of law filed concurrently with this affidavit shows that in determining the amount of the fees to be awarded, the usual practice is for the Court first to determine the number of hours expended and the appropriate hourly rate and then to calculate a base figure, a "lodestar", based on hours expended times hourly rate. The next step is to make adjustments from the base figure based on such factors as the contingent nature of the receipt of the fees and the result obtained for those represented. With this in mind, the remainder of this affidavit is divided into four sections, as follows: The

Attorneys' Hourly Rates; The Number of Hours Expended; The Appropriate Adjustments to the Normal Rates; and The Conclusion.

I

HOURLY RATES

3. The experience and background of the attorneys involved are, of course, relevant to the hourly rate to be awarded. The Court should therefore be aware of the following facts:

a. I was graduated from Harvard Law School in 1974. From 1974 to 1975 I was the law clerk to the Hon. Edward J. Schwartz, Chief Judge of the United States District Court, Southern District of California. In 1975 I opened my own practice, along with Roy B. Cazares (and two other persons) and since that time, have been associated with Mr. Cazares, either as full-time partner or as of-counsel.

b. I have, since 1976, associated myself with Mr. Cazares only on civil rights cases. As Mr. Cazares' affidavit described, we have been reasonably successful in representing diverse clients with difficult and sophisticated claims.

c. In 1976 I began teaching law first in San Diego and then, beginning in the fall, 1978, at the UCLA School of Law. I teach one of only a handful of courses in this country devoted exclusively to civil rights legislation, and also teach a civil rights litigation seminar. In addition to my teaching responsibilities at UCLA, I have often been invited by groups throughout the state to lecture on civil rights litigation, particularly §1983 claims.

4. It is submitted that the $125.00 per hour request I am making in this case is reasonable for the following reasons: (a) I have concentrated on civil rights litigation since I finished my judicial clerkship in 1975, thereby making me more experienced, more efficient and, hopefully, more effective than others who litigate such claims (b) the "going rate" in Los Angeles for an attorney with my experience and background ranges between $125.00 and $150.00 per hour.

II

HOURS EXPENDED

5. To date I have expended 1,265.50 hours on the prosecution of this case.

This time can be generally described as having been expended in legal research of often novel yet necessary theories, in preparation of pleadings and motion papers, in discovery, in opposing motions to dismiss and motions for summary judgment, in interviewing plaintiffs and witnesses, in answering interrogatories, in analyzing police reports, in compelling unanswered or improperly objected interrogatories and requests for production, in preparing for depositions, in summarizing depositions and reviewing deposition summaries, in preparing the pre-trial order and memoranda of contentions of fact and law, in outlining questions for witnesses at trial, in preparing instructions, in other trial preparation in conference with plaintiffs and co-counsel, and in reviewing and analyzing responses in discovery.

6. The primary reason that the number of hours expended is large is because of the breadth and complexity of the case. As this Court is well aware, both the state of the law and the state of the facts as of 1975 and 1976 required innovative lawyering and investigating; there was no blueprint for this case when we brought these claims.

7. A secondary reason that this case involved many hours of labor was the litigious nature of defendants. We do not desire to belabor the point, but it is not unimportant that access to obviously relevant discovery was blockaded at every turn; that legal issues were often and persistently misinterpreted

and misconstrued; that objections to discovery, exhibits and witnesses were often at best tenuous, even incomprehensible. It also merits this Court's attention that a group of defendants (granted Summary Judgment by Judge Ferguson) and their counsel found it appropriate to file a malicious prosecution complaint against both our clients and ouselves (sic) in the Riverside Superior Court. Only extraordinary effort to remove the case to federal court - where it was dismissed by Judge Ferguson - avoided the burden of defending that allegedly good faith claim at the same time plaintiffs were prosecuting this action. Finally, and perhaps the best evidence of the litigious nature of defendants, the number of hours expended is great because defendants never once made a reasonable settlement offer. Trial, as this Court is aware, was necessary to vindicate our clients rights.

III

ADJUSTMENTS TO HOURLY RATES

8. A multiplier or "bonus" award should be afforded above the normal hourly billing rates. As both the accompanying Memorandum of Law and affidavit of Mr. Cazares explain, such a multiplier is not only appropriate, but perhaps paradigmatically so if citizens are to continue to value the rights of the national community. It is not difficult to imagine that absent such bonuses fewer and fewer attorneys willing to risk a good portion of their

professional lives on difficult and highly contingent claims.

IV

CONCLUSION

9. Based on the facts and points outlined above as well as in the other affidavits and in the brief submitted herein, it is submitted that the amount of time expended on this case is reasonable, that the hourly rates requested are reasonble, that a multiplier or bonus is appropriate in this case, and that therefore this Court should make an award herein of $495,713.51.

/ss/Gerald P. Lopez
GERALD P. LOPEZ

SUBSCRIBED AND SWORN TO before

me this 1 day of December, 1980.

/ss/Marianne V. Roiz
Notary Public in and for said
County and State

Official Seal
Marianne V. Roiz
Notary Public, California
My Commission Exp. July 18, 1982

CAZARES & TOSDAL
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San Diego, Ca 92101
Telephone: (714) 233-6581
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al.,)
)
Plaintiffs,)
)
vs.)
)
CITY OF RIVERSIDE, et al.,)
)
Defendants.)
)

No. CV 76-1803-MRP

AFFIDAVIT OF ROY B. CAZARES RE: REQUEST FOR ATTORNEYS FEES

ROY B. CAZARES, being duly sworn, deposes and says:

1. I am co-counsel for the plaintiffs in the above-captioned action. I

make this affidavit in order to bring certain facts to the Court's attention which are relevant to the amount of attorney's fees requested in plaintiff's application for attorney's fees.

2. Initially, it should be stated that during the settlement conference on August 31, 1979, this Honroable (sic) Court informed Counsel for Defendants that the case was complex and that plaintiffs were fully entitled to legal representation. This Court directed defendant's attorney to consider the substantial exposure of defendants to attorney fees alone, and advised counsel to consider said exposure in discussing settlement. Attorney for defendants returned to the settlement conference and repeated his principal's position that they would not offer more than

$10,000.00 in full settlement of all claims including attorney fees. This offer to settle all claims including attorney fees was made after five years of extensive pre-trial discovery and litigation. Counsel for defendants knew or should have known that expenses alone nearly totalled $7,000.00.

3. The memorandum of law filed concurrently with this affidavit shows that in determining the amount of the fees to be awarded, the usual practice is for the Court first to determine the normal hourly rates charged and the number of hours expended on the case and then to calculate a base figure based on hourly rates times number of hours expended. The next step then is to make adjustments from the base figure based on such factors as the contingent nature of the

receipt of fees and the result obtained for the represented plaintiffs. With this in mind, the remainder of this affidavit is divided into four sections, as follows: The Attorneys' Hourly Rates; The Number of Hours Expended; The Appropriate Adjustments To The Normal Rates; and the Conclusion.

I

HOURLY RATES

4. The experience and background of the attorneys involved is relevant to the hourly rate to be awarded. Therefore, affiant respectfully invites the Court's attention to the following facts:

a. I graduated from San Diego State College with honors and with distinction in 1970, I graduated from Harvard Law

School in 1973. Between July of 1973 and May of 1975, I was employed as a staff trial attorney with the Defenders Program of San Diego County. As a trial attorney with the Defenders Program, I was responsible for all phases of litigation in criminal defense for indigents. I handled virtually every single type of offender and represented clients in various forums such as the Municipal Court, Superior Court, Court of Appeals, Juvenile Court, Family Law Court, Mental Health Court, Parole Hearings, California Rehabilitation Center Exclusion Hearings, Mentally Disordered Sex Offender Hearings, Civil Addict Program Hearings and Welfare Board Hearings. I was solely responsible for all phases of the cases from initial bail reviews to exhaustion of appellate relief. I prepared and argued numerous pre-trial motions, extraordinary writs, appeals and motions for past conviction relief. I handled in excess of five hundred criminal cases of which many went to jury trial in the Superior Court.

b. In May of 1975, I started private practice with the firm of Jones, Cazares, Adler and Lopez. The firm handled a general practice with a strong emphasis on civil rights and representation of low income clients. Since entering private practice I have been involved in cases such as the following: **Aleman v. Alvarado, Laborers Local 89,** Civil Case No. 76-407-T, S.D. Cal. The "Local 89" case arose out of complaints made to affiant that union leaders were mishandling various pension funds. Affiant obtained the cooperation of the United

States Attorney in prosecuting union leaders while plaintiffs sought civil relief. Ultimately seventeen union officers or ex-officials were convicted and ordered to pay restitution to the union.

United States of America, Chicano Federation, et al., v. San Diego County, et al, Civil Case No. 76-1094-S, S.D. Cal. As attorney for plaintiff Chicano Federation of San Diego County, Inc., a party plaintiff, I was directly responsible for the implementation of a five year consent decree that provides broad based relief for Chicanos, women, blacks and Pan-Asians who have suffered the effects of past employment discrimination in County hiring, promotion, training and transfer policies. I have been involved in challenging hiring tests in terms of reliability and validity. I obtained an injunction against the County Board of Supervisors to prevent them from circumventing the Consent Decree and I have assisted in analysis of progress towards meeting interim goals in the Decree.

Lisa Martine Pliscou by her Guardian Ad Litem, Norm Pliscou v. Holtville Unified School District, Civil Case No. 75-0926-GT. Our firm represented a young high school student in protecting her rights guaranteed under the First Amendment to the Constitution. We were the prevailing party.

The People of the State of California v. Federico Frank, Patricia Zerda Zerda, et al., Crim No. 39862, Superior Court, San Diego County. I represented Patricia Zerda Zerda in a multiple defendant murder trial that lasted approximately five months. It was the longest murder trial in the history of San Diego County at the time and involved unique legal issues. The case involved Colombian and Swiss nationals arrested in the Republic of Mexico for a homicide committed in San Diego. The Court specifically requested that I participate in the defense.

Berry, et al., v. City of San Diego. This was a Title VII class action in which we represented the discriminatory hiring practices of the San Diego Police Department and defendant City of San Diego. Six of the eight named plaintiffs were reinstated with back pay and broad based relief for the class was insured by a consent decree entered into by the parties.

In addition to approximatley seventy five actual trials in the state courts, I have been retained to try various cases in the Federal District Court. As a litigation specialist I have also represented clients before a variety of other hearings such as formal labor arbitrations (I've won 12 out of 15 arbitrations), Department of Motor Vehicle Hearings, Insurance Arbitration Hearing, National Labor Relations Board Hearings, U.S. Customs Hearings, Immigration and Naturalization Service Hearings on deportations and exclusions, Social Security Adminstration Hearings, Administrative Law Hearings re: Longshoremen and Harbor Workers' Act, California Labor Commission Hearings, California OSHA Hearings and U.S. Department of Labor Hearings.

c. I have received awards and certificates of appreciation from the following:

Cabrillo Foundation, award for outstanding community services; San Diego Legal Aid Society for service to the Board of Directors,

1979 Joint California State Legislature Resolution For Outstanding Leadership in the are of Civil Rights,

San Diego County Fiscal and Justice Planning Agency for service to the Board of Advisors,

La Raza Lawyers Association for service as first President of the Association.

I have served on various boards and commissions such as:

Commission of the Californias

Legal Aid Society

National Conference of Christians and Jews

California Rural Legal Assistance, Inc.

San Diego County Fiscal and Justice Board

Chicano Federation, Justice Committee

Alba 80 Society (Scholarship Foundation)

Sweetwater Unified School District

Title I Advisory Committee

Chicano Free Clinic Board

d. In addition to practicing law, I have taught Police Community Relations at Southwestern College and Civil Rights, Constitutional Law and Immigration Law and Practice at San Diego State University. I have lectured to attorney groups on international law between Mexico and the United States and have consulted with other attorneys on how to litigate immigration, personal injury and civil rights cases. I have lectured to the Association of Mexican American Educators, California Association of Bilingual Educators, the San Diego Policy Academy, San Diego City Schools, San Diego County Schools and a number of college university, and high school classes.

5. It is submitted that the $125.00 per hour request I am making in this case is reasonable because:

a. In the five years since I started working on this case, inflationary pressures have caused a rise in the normal hourly rate charged by attorneys.

b. I have extensive litigation experience over a broad range of legal issues and I am therefore considered more experienced than most attorneys with seven years in practice.

c. The issues in the case were complex and probably beyond the expertise of lawyers with less experience.

d. The normal rate for complex litigation in Los Angeles is $150.00 per hour.

II

HOURS EXPENDED

6. To date I have expended 681.25 hours in the preparation and and prosecution of this case. In general, I have spent much of the time in discovery, depositions, witness interviews, legal research, answering interrogatories,

investigation, preparation for pretrial conferences, reviewing extensive police reports, preparing for trial and trial. I have made numerous trips to Los Angeles and Riverside to prepare for trial. The law of the case changed frequently and dramatically during the pretrial stages, thus necessitating expanding discovery to conform to emerging doctrines.

Plaintiffs in this case could not retain local counsel to represent them because of the highly politicized background of the case. Two weeks after the incident giving rise to this lawsuit, Chicanos from Casa Blanca openly rebelled against perceived police abuses against them. Several police officers and civilians were injured and property damage was high. The Casa Blanca incidents received national press and the Program 60 Minutes did a series on police community problems in Riverside. Your affiant and his law partners accepted the case because we felt it had great merit and because it was our opinion that the plaintiffs would go unrepresented if they had to rely on local atotrneys (sic). Therefore, of necessity, the case was such that it required many hours of travel time both to the site of the incident and to the Federal Court in Los Angeles.

Attached hereto is exhibit A which describes the activity engaged in by affiant during the time billed.

7. I have reviewed the following records of hours expended by law clerks

Julie Davis and Mark Crowley and the hours expneded appear to be reasonable:

Julie Davis:

September 20, 1980	Research	5.00
September 22, 1980	Research	4.00
September 23, 1980	Research	2.00
October 14, 1980	Research	2.00
October 17, 1980	Research	4.00
November 7, 1980	Research	5.00
November 8, 1980	Research	7.00
November 10, 1980	Research	5.00
November 12, 1980	Research	1.00
November 14, 1980	Research	3.00
November 19, 1980	Research	1.50
November 23, 1980	Motion	4.00
	Total	43.50
43.50 X $25.00 =		$1,087.50

Mark Crowley:

June 13, 1979	Witness interviews (Riverside)	6.00
June 14, 1979	Witness interviews (Riverside)	6.00
March 10, 1980	Reviewed Discovery	5.50
March 11, 1980	Reviewed Discovery	5.50
March 12, 1980	Trial preparation	6.00

March 17, 1980	Traveled with Mr. Cazares to Riverside to Interview witnesses	10.00
March 18, 1980	Helped to collate discovery	2.00
	Total	41.00

41 hours X $25.00 = $1,025.00

Julie Davis is a third year law student at UCLA School of Law. Mark Crowley is a recent admittee to the Bar.

Total paralegal/law clerk time expended	$2,112.50

IV

ADJUSTMENTS TO HOURLY RATES

8. A multiplier or "bonus" award should be afforded in this case above the normal hourly billing rates. The multiplier which plaintiffs seek in this case is 2.00 times the hourly rates for

attorneys. We ask that this multiplier be applied only to the normal billing rates of Messrs. Cazares and Lopez; we do not ask that the multiplier be applied to the law clerk and paralegal rates. For Messrs. Cazares and Lopez, the total fees requested total $244,781.25. When the multiplier of 2.00 is applied to this figure, the total is $489,562.50. In turn, when to this figure is added the charges for the paralegal and law clerk time, and the disbursements our total fee request amounts to $495,713.51.

9. There are several reasons that a "multiplier" or bonus award is appropriate in the instant case. The law on the point is fully discussed in the "Plaintiffs' Memorandum of Points and Authorities In Support of Motion For Attorneys'

Fees", submitted concurrently with this affidavit.

10. Plaintiffs believe that the principle reason that a multiplier award should be made in this case is because it would encourage other attorneys to represent low income plaintiffs in important civil rights cases on a contingent fee basis. It is only fair and reasonable that attorneys willing to assume these type of cases be reimbursed in such a fashion that insures that lawyers will be willing to represent even those who cannot afford to pay or to advance costs. Plaintiffs believe that the vindication of constitutional rights is equally as important as the protection afforded the free market economy by successful antitrust litigants. Many attorneys will only protect

the poor or the unpopular against constitutional deprivations if they can feel reasonably assured that their commitment to that cause will be recognized as a service to the community as well as the litigants. The poor, the unpopular and those lacking in power have the same rights to preserve their dignity as everyone else. To the extent that courts encourage the protection of their constitutional rights, society in general is served.

DATED: 12/1/80

Respectfully submitted,

/ss/Roy B. Cazares
ROY B CAZARES

SUBSCRIBED AND SWORN TO before me

this 1 day of December, 1980.

/ss/Marianne N. Roiz
Notary Public in and for said
County and State

Official Seal
MARIANNE N. ROIZ
Notary Public - California
My Commission Expires July 18, 1982

HOURS SUBMITTED BY ROY B. CAZARES

8/21/75	Travel to Riverside to conduct preliminary interviews of potential plaintiffs and approximately ten witnesses, took photographs of area and conducted preliminary investigation	13.00
8/25/75	Conference with Jerry Lopez re: results of trip to Riverside, potential causes of action	2.00
9/22/75	Conference with Jerry Lopez re: research into individual and municipal liability	2.50
9/30/75	Conference with Lopez re: theories of liability and what plaintiffs we are going to represent	1.50
10/3/75	Meeting with clients in our offices regarding representation and facts of incident	2.50
10/23/75	Worked on 100 day demands re: exhaustion of administrative remedies	1.00

10/23/75	Meeting with Manuel Flores, Jr. and Jerry Rivera re: progress of case and new witnesses	2.00
10/25/75	Travel to Riverside to file 100 day demands, investigation, witness interviews (with Jerry Lopez)	8.50
11/20/75	Conference with J. Lopez re: Riverside	1.50
11/21/75	Conference with clients	3.50
11/25/75	Conference with Jerry Lopez	1.00
12/15/75	Conference with Jerry Lopez re: Riverside claims for damages	1.50
1/14/76	Conference with Jerry Lopez re: diffiulty in identifying defendants and John Doe pleading	1.00
1/28/76	Conference with Jerry Lopez re: Insurance company request for indemnity	.45
2/18/76	Worked with Jerry Lopez on cause of action against City of Riverside	1.50

3/19/76	Meeting with Jerry Lopez re: pendant claims and damages	2.00
3/29/76	Conference with Jerry Lopez and Napoleon Jones re: elements of proof of psychological damages for Donald Rivera and Mark Larrabee	1.50
4/9/76	Meeting with Jerry Rivera	1.00
4/29/76	Meeting and research into statutory immunity and basis for injunctive relief	2.50
5/19/76	Reviewed draft of complaint	1.50
6/16/76	Conference re: discovery, interrogatories or depositions	1.00
7/2/76	Reviewed answer to complaint; conference with Jerry Lopez	1.00
7/15/76	Reviewed complaint No. 76-1901 re: co-plaintiffs	.75
8/24/76	Conference with Jerry Lopez re: discovery of police files and manuals	1.50

9/17/76	Reviewed cross-examination notes of attorneys made during criminal prosecution	2.00
9/24/76	Reviewed a series of police reports re: incident	1.50
10/15/76	Conference with Jerry Lopez re: deposition scheduling	1.50
10/17/76	Conference with Jerry Lopez and Samuel Paz, attorney for co-plaintiff re: discovery, dispositions	2.50
12/13/76	Reviewed witness statements	2.75
12/14/76	Meeting with Jerry Lopez re: depositions	1.50
12/15/76	Travel to Riverside	2.00
	Preparation of plaintiffs for depositions	7.00
12/16/76	Depositions of Jerome Rivera, Jennie Rivera, Lee Roy Rivera, Donald Rivera	8.00
1/6/77	Conference with Lopez re: deposition	2.00
1/10/77	Preparation for the depositions of Sgt.	

	L.L. Richardson, Officer Gerald Miller, Officer Joachim Palm, Officer Robert Plait, Officer Kenneth Qualls, Sgt. Michael Watts, 5:00 p.m. to 11:30 p.m.	6.50
1/10/77	Read motion to dismiss City	1.25
1/11/77	Travel to Los Angeles for depositions Depositions of: Sgt. L.L. Richardson, Officer Gerald Miller, Officer Joachim Palm, Officer Robert Plait, 10:a.m. to 4:00 p.m.	5.00
1/12/77	7:00 a.m. to 9:30 a.m. preparation for depositions Depositions of: Sgt. Michael Watts, Officer Kenneth Qualls, 10:00 a.m. to 1:45 p.m.	3.75
	Conference with attorney Samuel Paz	1.75
	Travel from Los Angeles to San Diego	2.45
1/13/77	Conference with Jerry Lopez re: defendant depositions	1.00
1/28/77	Proof read motion in opposition to dismiss City	1.00

2/1/77	Correspondence from Jennie Rivera	.20
2/7/77	Reviewed defendants motion to dismiss	2.00
2/11/77	Received correspondence from Lee Roy Rivera including medical history	1.00
2/15/77	Conference re: defendants interrogatories	1.50
3/3/77	Read draft of opposition to individual motions to dismiss	1.00
3/15/77	Reviewed defendants reply to our opposition to motion to dismiss	.75
3/25/77	Reviewed correspondence and stipulation	.25
3/25/77	Read individual defendants reply to our opposition to motion to dismiss	1.00
3/29/77	Correspondence from Kotler re: plaintiffs responses to interrogatories	.50
4/11/77	Reviewed defendants second set of interrogatories consisting of 414 questions	3.50

4/15/77	Read defendants to require further answers to interrogatories; reviewed answers to first set of interrogatories	1.50
4/18/77	Conference re: defendants discovery tactics and oppressive interrogatories	.50
5/6/77	Read plaintiffs points and authorities in opposition to defendants motion to compel further answers	1.00
5/11/77	Reviewed defendants opposition to plaintiffs motion for protective order	.75
7/6/77	Worked on plaintiffs responses to interrogatores	3.00
7/7/77	Worked on plaintiffs answers to defendants interrogatories	3.00
7/22/77	Read defendants memorandum in opposition to plaintiffs motion to compel	1.00
8/5/77	Read defendants answers to plaintiffs interrogatories (2nd set)	2.00

8/5/77	Reviewed defendants motion for summary judgment	1.75
8/19/77	Conference with Jerry Lopez re: summary judgment	1.00
9/7/77	Reviewed draft of opposition to defendants motion for summary judgment	1.00
9/19/77	Review of draft of Supplemental Points and Authories in Opposition to Defendants Motion for Summary Judgment	1.00
9/22/77	City of Riverside's opposition to motion to compel	1.00
9/29/77	Conference with Jerry Lopez re: all motions and interrogatories, case review	3.00
10/3/77	Prepared correspondence to clients re: authorizations for release of medical information	1.00
11/7/77	Reviewed defendants motion to compel further answers	.75

12/8/77	Reviewed draft opposition to defendant's motion to compel	.75
1/24/78	Review of defendants taxing of costs on summary judgment	.50
1/26/78	Conference with Jerry Lopez re: taxing of costs	1.00
2/3/78	Witness interview in Riverside and travel 8:00 a.m. to 5:00 p.m.	10.00
2/9/78	Conference with Jerry Lopez re: expert testimony	1.00
2/27/78	Review of extensive medical records of Manuel Flores, Jr. in preparation for deposition of Harlan H. Omlid, M.D., review of doctor/patient privilege 6:00 p.m. to 9:45 p.m.	3.75
	Conference with Jerry Lopez	1.00
2/28/78	Travel to Fontana, Ca for deposition Deposition of Harlan H. Omlid, M.D. 2:00 p.m. to 3:00 p.m.	1.50
	Travel from Fontana to San Diego	2.50

3/1/78	Preparation for deposition 10:30 a.m. to 12:00 p.m.	1.50
	Travel from San Diego to San Bernardino 12:00 to 2:00 p.m.	2.00
	Deposition of Donald J. Feldman, M.D. 2:00 to 3:30 p.m.	1.50
	Return to San Diego	2.00
4/7/78	Review of further answers submitted by City on motion to compel	2.00
4/19/78	Conference with Jerry Lopez re: discovery against City to establish practice or policy	1.00
4/21/78	Conversation with Kotler and follow-up correspondence re: stipulation	.50
5/3/78	Served by San Diego County Sheriff with complaint for malicious prosecution, review of complaint	1.00
5/3/78	Conference (telephone) with co-defendant Jerry Lopez on malicious prosecution and re: cross-complaint for abuse of process	.50

5/4/78	Correspondence to Kotler re: discovery	.50
5/15/78	Conference with Jerry Lopez re: removal of case, malicious prosecution, to federal court	2.00
5/16/78	Review of petition for removal and supporting affidavit	1.00
5/15/78	Review motion to dismiss and motion for summary judgment	1.00
6/6/78	Review of motion by defendant to remand to Superior Court	.75
6/16/78	Review to our motion for summary judgment	1.75
7/6/78	Reviewed defendants response to our opposition to defendants motion to remand	.75
7/18/78	Reviewed individual and City's answers to interrogatories	1.50
7/19/78	Reviewed answers to interrogatories	1.50
8/2/78	Drafted notice of deposition	.25

8/10/78	Conference with Jerry Lopez re: discovery	2.00
8/28/78	Preparation for deposition 4:00 p.m. to 5:30 p.m.	1.50
8/29/78	Travel from San Diego to Riverside	2.15
	Deposition of Officer Jan E. Olson 10:30 a.m. to 12:00	1.50
	Travel from Riverside to San Diego 1:00 p.m. to 3:30 p.m.	2.50
9/6/78	Reviewed Casa Blanca Operational Plan	1.75
9/18/78	Review Kotler letter re: pre-trial conference, conversation with co-counsel	.25
9/19/78	Cover letter and notice of deposition of Eltringham, Webster, Innskeep	.50
9/20/78	Review of letter and stipulation from Kotler	.25
10/4/78	Preparation for deposition of Officer Donald B. Eltringham, 1:00 p.m. to 2:30 p.m.	1.50
10/5/78	Travel to Riverside from San Diego, 8:00	

	to 10:00 a.m.	2.00
	Deposition of Officer Donald Eltringham 10:30 a.m. to 11:45 a.m.	1.25
	Return to San Diego	2.20
10/6/78	Review of Kotler's correspondence re: deposition of Ferguson, conference with Jerry Lopez	.50
10/10/78	Drafted correspondence to Kotler re: deposition and pretrial conference	1.00
10/13/78	Reviewed correspondence from Kotler re: depositions and pretrial conference	.50
10/18/78	Correspondence to Kotler	.75
11/8/78	Correspondence to Kotler re: cancelled depositions and in response to his letter	.50
11/13/78	Conversation with Kotler re: Stipulation	.25
11/28/78	Set up deposition in Salinas	.25
11/28/78	Letter to Kotler re: site and time of Ferguson's deposition in Salinas	.25

12/3/79	Correspondence to all plaintiffs re: 3/25/80 trial date	.75
12/11/78	Conference with Jerry Lopez	.50
12/11/78	Preparation for the depositions of Deputy District Attorneys Daniel Webster, Donald Innskeep and Detective Michael Smith 3:00 p.m. to 4:30 p.m.	1.50
	5:00 p.m. to 7:00 p.m.	2.00
12/12/78	Travel from San Diego to Riverside 7:30 a.m. to 10:00 a.m.	2.50
	Deposition of Detective Michael Smith 10:00 a.m. to 11:45 a.m.	1.75
	Deposition of Deputy District Attorney Daniel Webster 1:30 p.m. to 2:30 p.m.	1.00
	Deposition of Deputy District Attorney Donald Innskeep, 2:30 p.m. to 3:30 p.m.	1.00
	Conference with Jennie Rivera, 4:00 p.m. to 6:00 p.m.	2.00
	Travel from Riverside to San Diego, 6:00 p.m. to 8:15 p.m.	2.25

12/18/78	Preparation for deposition of Thomas Blanshard, M.D., 8:30 a.m. to 9:30 a.m.	1.00
12/19/78	Travel from San Diego to Fontana, CA 7:30 a.m. to 10:00 a.m.	2.50
	Deposition of Dr. Blanchard, 10:30 to 11:30 a.m.	1.00
	Conference with Jennie Rivera 12:00 p.m. to 1:00 p.m.	1.00
	Travel from Riverside to San Diego 1:00 to 3:00 p.m.	2.00
12/26/78	Letter to Kotler re: Jerry Rivera	.25
12/28/78	Preparation for deposition for Chief Ferguson 4:30 p.m. to 7:00 p.m.	2.50
	Travel to Salinas, CA, from San Diego via Monterrey, Ca, 6:30 to 11:00	4.50
	Deposition of Chief Ferguson 11:00 a.m. to 12:25 p.m.	1.40
	Travel from Salinas to Monterrey to San Diego, 1:30 to 6:00 p.m.	4.50
1/18/79	Received and reviewed defendants opposition	

	to further continuances and demand for early trial date	.75
1/22/79	Pre-trial conference in Los Angeles, preparation and travel to and from Los Angeles	5.75
2/1/79	Conference with Jerry Lopez	1.50
2/1/79	Travel from San Diego to Los Angeles for pretrial conference with Mr. Kotler, 7:30 a.m. to 10:00 a.m.	2.50
	Pre-trial conference and exchange of exhibits, 10:00 a.m. to 11:45 a.m.	1.75
	Travel from Los Angeles to San Diego 2:30 to 5:00 p.m.	2.50
2/8/79	Proof read contentions of law and fact, signed	2.75
2/26/79	Preparation for pretrial conference, pretrial conference, travel to and from Los Angeles	6.75
2/27/79	Pretiral preparation, review of witness statements	3.00

3/5/79	Pretrial preparation and review of interrogatories	2.00
3/10/79	Review of witness statements in preparation of trial	4.00
3/12/79	Worked on amended pretrial order	2.50
3/14/79	Reviewed police reports	2.50
3/16/79	Reviewed amended pretrial order	1.00
3/19/79	Worked on amendment to pretrial order	1.00
3/20/79	Read, drafted supplemental memorandum of law	1.00
3/24/79	Worked on trial preparation re: direct examination of plaintiff's witnesses	3.00
3/28/79	Drafted affidavit in opposition to defendant's motion to exclude evidence	2.00
3/29/79	Correspondence to Clerk, U.S. District Court re: subpoenas	.30
4/2/79	Received and reviewed defendants response to plaintiffs supplemental memorandum of law	.75

4/3/79	Letter to clerk re: subpoena	.25
4/3/79	Correspondence to Mr. & Mrs. Larrabee re: trial date of April 17, 1979	.25
4/9/79	Preparation for, travel to, pretrial conference and conference	6.75
4/16/79	Preparation for pretrial conference, travel to and from Los Angeles for pretrial conference	5.30
	Pretrial conference with attorney Kotler to exchange exhibits and to work out stipulations	2.50
4/27/79	Preparation of plaintiffs Second Supplemental Memorandum of law, 9:00 a.m. to 3:00 p.m.	5.00
5/12/79	Cross-referenced original witness statements with subsequent interviews, selected witness, review approximately 400 pages of notes of interviews	6.00
5/15/79	Received and reviewed defendants response to	

	plaintiffs Second Supplemental Memorandum of law	.50
5/21/79	Received and reviewed defendants motion to dismiss for failure to prosecute and supporting affidavit	1.00
6/4/79	Preparation of proposed stipulations and modified exhibit list	2.00
6/7/79	Correspondence to court	.25
6/13/79	Travel to Riverside with Mark Crowley for interviews with witnesses	6.00
6/14/79	Witness interviews in Riverside and return to San Diego	6.00
6/15/79	Preparation of opposition to defendants motion to dismiss for lack of prosceution, 2:00 p.m. to 5:00 p.m. Meeting with Jerry Lopez	3.00
6/19/79	Correspondence to Kotler re: requests for stipulations and exhibits	1.00
	Correspondence to court	.25

6/22/79	Received and review defendants affidavit in response to plaintiffs affidavit opposing motion to dismiss for lack of prosecution	.50
7/2/79	Preparation for, travel to, and hearing on motion to dismiss for lack of prosecution	7.50
7/5/79	Travel to Los Angeles, preparation of exhibits	6.00
7/11/79	Reviewed defendants objection to plaintiffs modified exhibit list	1.00
8/2/79	Correspondence to all plaintiffs re: mandatory settlement conference on 8/31/79	1.25
8/23/79	Reviewed file re: settlement	2.00
8/31/79	Preparation for settlement conference with plaintiffs resent, travel to and from Los Angeles and settlement conference	6.50
10/19/79	Conference (telephone) with Jerry Lopez re: settlement	.50

10/22/79	Travel to and from Los Angeles for settlement/ status conference	5.50
12/13/79	Travel to Los Angeles for conference with Jerry Lopes, entire case review	8.00
2/4/80	Preparation for status conference, status conference, travel to and from Los Angeles; conference with Jerry Lopez	7.75
2/28/80	Correspondence to Kotler re: supplemental pleadings	.25
3/8/80	Meeting with Jerry Lopez in Los Angeles re: trial preparation, travel to Los Angeles and return	7.00
3/10/80	Received and reviewed defendants memorandum of contentions of law and fact	3.25
3/11/80	Correspondence to all plaintiffs and witness re: meeting at Rivera residence and 3/25/80 trial date and schedule	1.25

3/15/80	9:00 a.m. to 5:00 p.m., trial preparation, preparation of subpoenas and proposed examination, review of Casa Blanca Report	7.00
3/17/80	Interview all witnesses and plaintiffs in preparation for trial, reviewed all depositions of plaintiffs and witness statements, travel to and from Riverside	10.50
3/18/80	3:00 p.m. to 7:30 p.m. trial preparation	4.50
3/21/80	Received minute order re-setting trial to June 3, 1980.	.15
	2:00 p.m. to 7:00 p.m. trial preparation, developed tentative order of proof, reviewed medical records and depositions on Manuel Flores and Jerome Rivera	5.00
3/21/80	Received Minute Order continuing trial date	.10
5/9/80	Review of Police operating manuals re: use of force and tear gas, review of Casa Blanca Report	2.50

5/9/80	Organized and reviewed medical charts, psychiatric charts, 60 minute transcript and stipulations re: dismissal and discovery	1.75
6/16/80	Received and reviewed defendants' motion for trial date certain, memorandum of points and authorities	.50
7/19/80	Trial preparation; review old notes, investigator reports, photo and exhibits	5.00
7/26/80	Trail preparation; reviewed defendants memorandum of contentions of law and fact and exhibits	6.00
7/30/80	Received Notice of Continuance of trial date to 9/16/80	.15
8/1/80	Correspondence to all plaintiffs re: new trial date of September 16, 1980	.75
8/28/80	Received and review Ex Parte Motion to continue oral arguments on appeal in C.A. No. 78-3319; CV 78-2076	.25

9/6/80	Review of answers to plaintiffs interrogatories, compared answers to answere to answers given in depositions, reviewed attorney Wallace Farrels trial notes re; crossexamination of defendant police officers during criminal trials, expanded on tentative cross-examination, reviewed police procedures manual, researched certification guidelines for use of tear gas under California Penal Code. 8:00 a.m. to 5:30 p.m.	8.50
9/10/80	5:00 a.m. to 9:00 a.m. legal research in preparation for trial, read major cases cited in contentions of law, 1:00 p.m. to 4:00 p.m.	7.00
9/11/80	Trial preparation, review of plaintiffs contentions of law and fact, defendants contention of law and fact, reviewed complaint and prepared outline of elements of each cause of action and supporting	

	evidence and corroborating witnesses, reviewed jury instructions re: burden of proof and elements of each cause of action as against each defendant 1:00 p.m. to 8:00 p.m.	7.00
9/12/80	1:00 p.m. to 5:00 p.m. trial preparation, review of interogatories answered by plaintiffs, compared to plaintiffs depositions, preparation of additional subpoenas, telephone conference with Lee Roy Rivera, witness coordinator	5.00
9/13/80	8:00 a.m. to 6:00 p.m., preparation of trial folder for each named plaintiff including City of Riverside and organization of cross-index to exhibits	10.00
9/14/80	9:00 a.m. to 5:00 p.m., preparation of exhibits, marking exhibits, preparation of outline of every police report obtained during discovery	8.00

9/15/80	Travel to Los Angeles from San Diego	2.50
	Trial preparation 10:00 a.m. to 5:00 p.m.	7.00
	Conference with Jerry Lopez, co-counsel, re: presentation of case and witnesses from 6:00 p.m. to 11:00 p.m., preparation of exhibits and opening statement	5.00
9/16/80	5:00 a.m. to 7:30 a.m. preparation for trial	2.50
	9:00 a.m. to 5:00 p.m. trial	7.50
	7:00 to 10:00 p.m. trial preparation	3.00
	Received and reviewed proposed Voir Dire submitted by plaintiffs	.20
9/17/80	5:00 a.m. to 7:30 a.m. preparation for trial, review of statements of plaintiffs witnesses, review of clients depositions.	2.50
9/17/80	Trial from 9:00 a.m. to 5:00 p.m.	7.50
	Preparation for trial from 7:00 p.m. to 11:30 p.m., discussions with Jerry Lopez (co-Counsel) re: order of proof, elements of	

	causes of action and potential dismissals	4.50
9/18/80	5:00 a.m. to 7:30 a.m., trial preparation	2.50
	Trial from 9:00 a.m. to 4:00 p.m.	6.50
	7:00 p.m. to 11:00 p.m., review of police reports, inter-department communications, Riverside Police Department policy of batons, firearms, tear gas usage	4.00
9/19/80	5:00 a.m. to 7:30 a.m. preparation for trial, review of interrogatories re: Chief Ferguson	2.50
	Trial from 9:00 a.m. to 4:30 p.m.	7.00
	Travel from Los Angeles to San Diego	2.00
9/20/80	Trial preparation, review of damages, review of police reports for purposes of cross-examination of defendant police officer 10:00 a.m. to 4:00 p.m.	6.00
9/22/80	Travel from San Diego to Los Angeles	2.00
	Trial time 9:00 to 5:00 p.m.	7.50

9/23/80	5:00 a.m. to 7:30 a.m. trial preparation review of depositions, review of interrogatories and preparation of cross-examination	2.50
	Trial 9:00 a.m. to 5:00 p.m.	7.50
	6:30 to 11:30 p.m., trial preparation	5.00
9/24/80	Trial preparation 5:00 a.m. to 7:30 a.m.	2.50
	Trial time 9:00 a.m. to 5:00 p.m.	7.50
	Trial preparation and review of rebuttal evidence, preparation of additional jury instruction re: tear gas as dangerous instrumentality, research into impropriety of dismissals of criminal charges predicated on Stipulations of probable cause for the court. 7:00 p.m. to 11:30 p.m.	4.50
9/25/80	4:30 a.m. to 7:30 a.m., preparation of final arguments, preparation of rebuttal testimony	3.00
	Trial from 9:00 a.m. to 3:30 p.m.	5.50

	7:00 p.m. to 11:00 p.m., preparation of final argument	4.00
9/26/80	4:00 a.m. to 8:30 a.m., review of trial notes, complaint and depositions in preparation for final argument	4.50
9/26/80	9:30 to 3:00 p.m. final argument and rebuttal, instruction to jury	5.00
	Travel from Los Angeles to San Diego	2.00
9/29/80	Travel from San Diego to Los Angeles	2.00
	Standby for jury deliberation 9:00 to 5:00 p.m.	7.00
9/30/80	Standby for jury deliberations 9:00 a.m. to 5:00 p.m.	7.00
10/1/80	Standby for jury deliberations 9:00 a.m. to 5:00 p.m.	7.00
10/2/80	Standby for jury deliberations, responded to questions from jury 9:00 a.m. to 4:30 p.m.	6.50
10/3/80	Standby for jury deliberations from 9:00 a.m. to 5:00 p.m.	7.00

	Travel from Los Angeles to San Diego	2.00
10/6/80	Travel from San Diego to Los Angeles	2.00
	Standby for jury deliberations 9:00 a.m. to 5:00 p.m.	7.00
10/7/80	9:00 a.m. to 3:00 p.m. waiting time for verdicts and reading of verdicts	4.00
11/28/80	Preparation of attorney fee request and affidavit	10.00

HOURS SUBMITTED BY GERALD P. LOPEZ

1975		1976	
Aug.	4.50	Jan.	20.00
Sept.	15.50	Feb.	13.00
Oct.	21.50	Mar.	23.00
Nov.	23.50	Apr.	24.50
Dec.	4.00	May	7.50
		June	4.75
		July	15.00
		Aug.	14.50
		Sept.	11.75
		Oct.	13.50
		Nov.	13.50
		Dec.	21.50

1977		1978	
Jan.	30.75	Jan.	27.25
Feb.	34.50	Feb.	16.50
Mar.	46.75	Mar.	23.00
Apr.	22.75	Apr.	15.50
May	14.00	May	52.25
June	33.00	June	16.75
July	37.25	July	13.50
Aug.	30.25	Aug.	50.50
Sept.	55.25	Sept.	20.00
Oct.	34.50	Oct.	.25
Nov.	11.75	Nov.	6.00
Dec.	8.00	Dec.	18.50

1979		1980	
Jan.	60.50	Jan.	0.00
Feb.	41.00	Feb.	8.00
Mar.	33.50	Mar.	29.25
Apr.	51.00	Apr.	7.00
May	20.00	May	22.50
June	3.50	June	0.00
July	6.50	July	0.00
Aug.	0.00	Aug.	3.00
Sept.	0.00	Sept.	73.50
Oct.	0.50	Oct.	0.00
Nov.	0.00	Nov.	25.00
Dec.	10.50	Dec.	

Total hours expended: 1,265.50

COSTS INCURRED

10/31/75	Express Mail (2)	11.00
2/18/76	Randolph Levine	83.85
4/22/76	Susan Handler Menahem	160.00
4/23/76	Western Institute	100.00
4/26/76	Copy Shoppe	5.68
5/28/76	Copy Shoppe	10.92
6/3/76	Postmaster	5.50
6/7/76	U.S. District Court	15.00
6/21/76	Service (Robert Lopez)	100.00
7/13/76	Jerry Lopez (copy costs)	2.23
8/18/76	Jones, Cazares, Adler & Lopez (copies)	18.91
4/77	Phone Bill	3.13
5/77	Phone Bill	9.32
7/77	Phone Bill	6.20
7/14/77	Gerald P. Lopez	124.75
7/15/77	U.S. Postmaster	7.16
8/77	Phone Bill	8.75
8/11/77	Express Mail	5.50
9/77	Phone bill	2.51
9/6/77	Express Mail	5.50
9/8/77	Gerald P. Lopez travel expense	39.00
9/19/77	Express Mail	5.50
9/30/77	Gerald P. Lopez Travel expense	40.00
9/30/77	U.S. Postmaster	5.60
9/30/77	Express Mail	6.25
10/77	Phone bill	3.29
10/4/77	Hermand Alcantar Travel	31.80
10/11/77	Express Mail	7.50
10/19/77	Gerald P. Lopez travel	16.50
10/20/77	Bessie Smith, Notary	10.00
1/10/78	Gerald P. Lopez travel	25.00
1/4/78	Kaiser medical records	11.00
2/23/78	Jennie Rivera xeroxing	25.00

3/10/78	R. B. Cazares (depositions)	2.07
3/10/78	Gerald P. Lopez travel	25.00
3/15/78	M. Flores, doctors depositions	64.40
5/23/78	Insurance bond premium	20.00
5/23/78	Herman Alcantar (travel)	10.00
5/25/78	Jerald P. Lopez copy expense	8.41
5/25/78	U.S. District Court	15.00
5/30/78	Herman Alcantar (travel)	27.68
6/7/78	Jerald P. Lopez travel	30.00
6/8/78	Civil Clerk Superior Court filing fee	157.00
8/1/78	Herman Alcantar, mileage	20.80
8/9/78	We Copy	3.43
8/9/78	Postage	2.64
10/23/78	Ed Webster Subpoena	20.20
10/25/78	Herman Alcantar	56.20
10/27/78	Katherine A. Las, C.S.R.	95.00
11/8/78	Ed Webster Subpoena	20.20
11/8/78	Donald Innskeep Subpoena	20.20
11/29/78	Deposition of Ferguson travel	76.00
12/4/78	Deposition of Ferguson travel	4.00
12/29/78	Car Rental	18.46
1/30/79	Express Mail Service	7.50
1/31/79	Trip expenses	50.00
1/31/79	Acapulco Motor Hotel, L.A.	25.80
2/1/79	Anna M. Williams, C.S.R.	138.12
2/1/79	Bray & O'Daly, C.S.R.	98.68
2/1/79	Racklin, et al, C.S.R.	15.00
2/14/79	Fishburn typeing, pre-trial	150.00
3/1/79	Virginia A. Mejia, C.S.R	229.58

3/1/79	Bor-Air Freight	65.00
4/6/79	Purolator Courier	7.75
5/2/79	Motel Riverside	15.90
5/31/79	Marvin Givant Attorney Service	25.00
6/14/79	Holdiay Inn	22.26
6/29/79	Advance Travel	28.00
7/2/79	Car Rental, Hertz	27.89
7/2/79	PSA	28.00
7/6/79	Bor Air Freight	94.45
7/19/79	Office Supply (appeal brief)	7.43
7/19/79	U.S. Postmaster (mailing appeal brief)	2.27
8/30/79	Roy B. Cazares travel	75.00
9/24/79	Marvin Givant attorney service	33.50
10/22/79	Amtrak	20.00
2/4/80	Amtrak	21.50
2/4/80	Expenses Roy B. Cazares	20.00
2/28/80	Postmaster Express Mail	7.50
3/17/80	Roy B. Cazares perdiem, Mark Crowley	40.00
5/22/80	Roy B. Cazares travel	52.34
9/12/80	Roy B. Cazares per diem	100.00
9/16/80	Officer Robert Plaitt witness fees	48.00
9/29/80	Amtrak	23.00
9/30/80	Roy B. Cazares travel and per diem	100.00
10/31/80	Roy B. Cazares per diem for each day of trial, 17 days X $50.00	850.00
	TOTAL COSTS:	$4,038.51

APPENDIX 6

KOTLER & KOTLER
JONATHAN KOTLER
PATTI ANN KOTLER
8500 Wilshire Blvd.
Suite 903
Beverly Hills, CA 90211
(213) 652-6273
Attorneys for Defendants

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al.,)
)
Plaintiffs,)
)
CITY OF RIVERSIDE, et al.,)
)
Defendants.)
)

No. CV 76-1803 MRP
Filed: January 7, 1981
Clerk, U.S. District Court
Central District of California

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF JONATHAN KOTLER IN SUPPORT THEREOF IN RESPONSE TO MOTION BY PLAINTIFFS FOR ATTORNEYS FEES AND COSTS.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al.,	)
Plaintiffs,	)
vs.	)
CITY OF RIVERSIDE, et al.,	)
Defendants.	)

No. CV 76-1803 MRP

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF JONATHAN KOTLER IN SUPPORT THEREOF IN RESPONSE TO MOTION BY PLAINTIFFS FOR ATTORNEYS FEES AND COSTS.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On October 7, 1980, the jury, in the above-entitled matter awarded Plaintiffs judgment in the total amount of $33,350.00--a sum that represented only a small fraction of the multi-million dollar recovery originally sought by Plaintiffs herein. Subsequent questions by a Los Angeles Times reporter (See 'Latinos, Police Both Claim Victories in Riverside Suit,' Los Angeles Times CC Part II 1,6 (Nov. 16, 1980) attached hereto as Exhibit "A" and incorporated herein by this reference as though set forth verbatim hereat) revealed that the jury foreman, Rene Wong, said: "We wanted the Riveras [Plaintiffs] to get something for putting up with the case for five years. But we didn't see any strong evidence to tell us to give them a whole lot of money, either." Mrs. Wong indicated to the Times reporter that "The jury had no idea the Latinos had sued for such a large sum in damages."

After the verdicts were read by the Court, counsel for Plaintiffs said: "On behalf of the Plaintiffs and their counsel, we will be making a motion for attorneys fees and perhaps a motion for additur." (See Reporter's Transcript p. 3 ll. 16-18 attached hereto as Exhibit "B" and incorporated herein as though set forth verbatim hereat.)

Prior to any such motions being filed, the Court informed Defendants' counsel that: "Now, the only thing I tell you Mr. Kotler, is that he [Plaintiffs' counsel] is going to get substantial attorneys fees, because this is a lot of time we're talking about." The Court continued, (R.T. p. 6 ll. 5-9) "My disposition now, so that you would be aware of it, is that I would give Mr. Cazares the attorney's fees that cover everything that he did that's legitimate so that the burden of the attorney's fees does not fall on the parties." The Court concluded (R.T. p. 6, ll. 23-25, p. 7, l. 1) "And the final thing I say is that I have no quarrel with the quality of what he did. So if I have no quarrel with the quality and he gives me the hours, I will compensate him. And you'll [Mr. Cazares] have to tell me the rate."

On December 5, 1980, Plaintiffs' counsel filed their motion for attorneys fees and costs. They did not file a motion for additur, which might have gotten more money for their clients but rather, merely filed a self-serving motion for attorneys fees. The motion for attorneys fees appears to be a brazen attempt to obtain from the Court as attorneys fees 16 times the amount awarded to the Plaintiffs by the triers of fact--the jury.

Plaintiffs' last non-negotiable demand was for the sum of $320,000.00. The total amount of judgment awarded in this case, however, was approximately 10% of that amount, the sum of only $33,350.00. Only six of the original 32 Defendants have had verdicts rendered against them by the jury. Eighteen of these Defendants were dismissed earlier in this case after motions for summary judgment, the Court finding that there was no triable issue of fact against any of them as to any claim pleaded by Plaintiffs.

This case did not involve a class action. Rather, eight citizens of the City of Riverside recovered amounts varying from $8,500.00 to $700.00. No injunctive or declaratory relief was requested or awarded at time of trial, although such relief had been sought by the Complaint filed herein. No policy changes of Defendant Riverside Police Department have been requested or made as a result of this trial, although, again, such was sought by the Complaint, though later dropped. Therefore, this litigation has in no way resulted in any long-range benefit for the community.

At no time during the trial did Plaintiffs' counsel attempt to vindicate the rights of an "oppressed minority." Plaintiffs in this case were middle class, fully employed, members of the Riverside community. At no time during the trial did the Plaintiffs claim that they had suffered discrimination on the basis of their race, color, or creed. This claim too, had been raised by the Complaint filed by Plaintiffs, and like the above-referenced claims, dropped by the time of the pretrial for lack of evidence.

Plaintiffs' attorneys have now petitioned this Honorable Court for fees which amount to nearly a half million dollars, or sixteen times the total amount of the jury award. Defendants respectfully contend that such a request is not only unreasonable, but is unconscionable under the circumstances of this case. It is a bold attempt by counsel to reap their own benefits from the case--and nothing more.

POINTS AND AUTHORITIES

1.

ATTORNEYS' FEES WHEN REQUESTED, MUST BE REASONABLE.

"Courts must remember that they do not have a mandate . . . to make the prevailing counsel rich." **Johnson v. Georgia Highway Express, Inc.**, 488 F.2d 714, 719 (5th Cir. 1974).

In discussing the statute authorizing attorneys' fee awards in an equal employment opportunity case, the Fifth Circuit found that the statute was not passed for the benefit of attorneys, but rather to enable litigants to obtain competent counsel worthy of contest with the caliber of counsel available to their opposition and to fairly place the economic burden of such litigation. **Johnson, supra**, at 719.

Johnson is quoted in **McPherson v. School District #186, Springfield. Illinois**, 465 F. Supp. 749, 756 (S.D. Ill. 1978) wherein the Court observed that:

> "The Court in **Johnson** cogently states that there is no duty to make counsel for prevailing party rich. These standards were not passed for the benefit of attorneys, but to enable litigants to obtain counsel to preserve rights secured by the Constitution or Laws of the United States."

In **Keyes v. School Dist. No. 1, Denver, Colo.**, 439 F. Supp. 393 (D. Colo. 1977), another civil rights case, the court outlined a "preferable method of computing an hourly figure for compensation." The method employed "is to consider all the factors . . ., and then arrive at an hourly rate or other figure which will represent fair and reasonable compensation, compatible to that which might be received in commercial litigation." **Keyes, supra**, at 413.

The **Keyes** Court also indicated that in computing attorneys fees awards in civil rights cases that,

> "several courts have taken into account payments authorized under the Criminal Justice Act, 18 USC §3006 A(d) for compensation to attorneys who represent indigent defendants in criminal cases. **E.E.O.C. v. Enterprise Ass'n. Steamfitters Local 638**, 542 F.2d 579, 593 n.12 (2nd Cir. 1976); **Panior v. Iberville Parish School Bd.**, 543 F.2d 1117, 1119 n.6 (5th Cir. 1976); **Knight v. Auciello,** 453 F.2d 852 (1st Cir. 1972); **Thompson v. School Bd.**, 363 F.Supp. 458, 465 (E.D. Va. 1973). The current authorization under the Act is generally $30.00 per hour for in-court service and $20.00 per hour for out-of-court time." **Keyes, supra**, at 414.

In **Scott v. Bradley**, 455 F.Supp. 672 (E.D. Va. 1978), an employment discrimination case, attorneys fees in the amount of one-third of the recovery were found to be adequate. The **Scott** court acknowledged the primary purpose behind the Civil Rights Attorneys Fees Award Act was to encourage lawyers to represent persons in the civil rights field; however, the court concluded:

> "A one-third contingent fee in the field of personal injury has proved most efficacious in encouraging counsel to represent injured plaintiffs in even the marginal cases of doubtful liability and transitory injury. There is no reason to believe similar awards where compensatory damages, as here, are substantial, would not have the same effect in civil rights cases." **Scott, supra**, at 673.

The Court went on: "[E]ven without such protective legislation lawyers have been massively encouraged to enter the personal injury field upon the expectation of being compensated on a contingent fee basis." **Scott, supra**, at 674.

In **Scott** the Plaintiff was awarded compensatory damages in the amount of $4,350.00.

> "The Court recognizes that many types of civil rights cases do not result in any monetary reward and others result in only minimal monetary awards. Obviously, in such cases, a percentage fee would be inappropriate. This is not such a case, however, and the Court need not base a fee determination on conditions contrary to fact." **Scott, supra**, at 674.

In the case at hand one-third of the $33,350.00 award received by Plaintiffs is not a half-million dollars. Based on the **Scott** guidelines, there is no reason to provide an economic windfall to Plaintiffs' counsel by awarding them sixteen times the award received by Plaintiffs in the instant action.

The **Scott** court continues at 675:

> "The Court must also bear in mind that while lawyers are to be

> encouraged to accept civil rights cases they should not be encouraged to take over the cases . . . . Had the court awarded the sum sought the case would have been the lawyer's case with the client as an appendage . . . . The lawyer cannot be permitted to subsume the case."

Scott continues, "the amount of the verdict is often a good indicator of the reasonableness of the time expended and fee to be awarded." **Scott, supra,** at 675.

The **Scott** court could well have had the instant case in mind when warning that civil rights attorneys should be encouraged to represent plaintiffs, but should not be encouraged to over-prepare the case. According to the affidavit submitted by Gerald P. Lopez with the motion for attorneys fees, during the month of September 1980, he expended 73.5 hours, though he fails to indicate by breakdown how these hours were spent. The Court is asked to recall pages of jury instructions prepared by Mr. Lopez, and tossed aside by the Court, who indicated that Mr. Lopez's instructions would be unintelligible to the average juror. **Scott, supra**, at 674, reminds us that "[s]erious criminal offenses often draw fines of lesser magnitude than the aggregate of payments to be required of defendants in Plaintiffs' proposal. Though a civil rights violation is a serious offense, it is, after all, a civil offense, not crime."

2.

DETERMINATION OF LODESTAR

In **Kerr v. Screen Extras Guild, Inc.**, 526 F.2d at 70, the Ninth Circuit adopted the twelve factors set forth in **Johnson v. Georgia Highway Express, Inc.**, 488 F.2d 714 (5th Cir. 1974), as appropriate guidelines which courts should consider in determining reasonable attorneys fees. The twelve factors listed in **Johnson v. Georgia Highway Express, Inc.**, 488 F.2d 714, 717-719 (5th Cir. 1974), are:

1. The time and labor required;
2. The novelty and difficulty of the questions;
3. The skill requesite to perform the legal service properly;

4. The preclusion of other employment due to acceptance of the case;
5. The customary fee;
6. The contingent or fixed nature of the fee;
7. The time limitations imposed by the client or the case;
8. The amount involved and the results obtained;
9. The experience, reputation, and ability of the attorneys;
10. The undesirability of the case;
11. The nature of the professional relationship with the client; and,
12. Awards in similar cases.

Each of the foregoing factors will be examined in an attempt to assist the

Court in its determination of what is a reasonable fee in this case.

A. THE TIME AND LABOR SPENT MUST BE REASONABLE.

The Court must first consider whether it was reasonable for Plaintiffs in this case to obtain out-of-the-area counsel (Mr. Cazares) when it was obvious that every time he had to investigate or appear in court there would be at least five hours of travel time involved.

In **McPherson v. School District #186. Springfield, Illinois,** 465 F.Supp. 749 (S.D. Ill. 1978), the Court made such an inquiry. In that case, as in the one at hand, it had not been shown whether any local attorney of comparable ability would have accepted the case.

In the case at hand, both counsel from San Diego (Mr. Cazares) and from Los Angeles (Mr. Lopez), were retained by Plaintiffs. However, time and time again the San Diego counsel made appearances in Los Angeles, while there was no explanation offered by Plaintiffs' counsel as to why it would not have been less costly and more appropriate for the Los Angeles counsel to have made the same appearance instead. One example as indicated in the hours submitted by Roy B. Cazares, are those hours from 9/29/80 until 10/7/80, comprising over fifty hours, during which time Mr. Cazres "stood by" for jury deliberations after traveling from San Diego to Los Angeles (sometimes daily). No indication has been made by counsel for Plaintiffs herein why it was necessary for Mr.

Cazares to spend this time, rather than have Mr. Lopez, who was already in Los Angeles during that time period, available as the "stand by" during that time period. Defense counsel whose office is in Beverly Hills, were on 30-minute notice from the Court. There has been no explanation of why Mr. Lopez could not similarly have been on 30-minute notice from Court, rather than requiring Mr. Cazares to camp-out for over a week on a full-time basis in Los Angeles awaiting the verdict.

Granted that when the witnesses are located in Riverside and the court in Los Angeles, there will obviously be a certain amount of travel time required of all counsel. The point, however, is that had Plaintiffs been paying an hourly fee to their counsel it is likely that counsel would have been required to make a more judicious allocation of labor between the two co-counsel (the Los Angeles counsel and the San Diego counsel) to prevent the travel time aspect from getting economically out of proportion, as here.

In **McPherson, supra**, at 758, Judge Ackerman points out:

> "In my opinion time spent traveling should not be compensated at the same hourly rate as office or court time. Efficiency is decreased and many times the circumstances allow little, if any productive effort."

Judge Ackerman counsequently reduced the hourly rate he found reasonable for attorneys for travel time.

In **Oliver v. Kalamazoo Board of Education**, 576 F.2d 714, 717 (6th Cir. 1978) the court found it incumbent to make a detailed analysis of how the attorney's time was spent:

> "I do not believe that attorneys should receive the same hourly rate, as was allowed here, for every type of service which they perform. Thus, for example, time spent traveling should not be compensated at the same hourly rate as time spent in court, or time spent in the office looking up law, or talking on the telephone."

In **McManama v. Lukhardt**, 464 F.Supp. 38 (W.D. Va. 1978), a class action civil rights suit, the court came to the conclusion that a lower rate must also be applied to hours spent on research, drafting, and other preparation, than for time that is actually spent in court. **McManama, supra**, at 43.

Thus, what is being respectfully suggested is that both the number of hours allowed by this Court and the rate at which the allowable hours are compensated, should be closely scrutinized and greatly reduced by this Honorable Court.

B. FEE-PETITIONERS HAVE FAILED TO SHOW THAT THE QUESTIONS PRESENTED BY THIS CASE ARE EXCEPTIONALLY NOVEL OR DIFFICULT.

A second factor suggested by **Johnson v. Georgia Highway Express, Inc., supra,** is to look to the novelty and difficulty of the questions presented.

As the Court is well aware, this is hardly the first civil rights 1983 action brought on the basis of state torts which has come before this or other courts. Fee-petitioners did not suggest any novel approach to the law, unless one could consider novel the fact that they suggested many unsuccessful avenues of recovery, most of which were dropped by the time of the pretrial after spending literally hundreds of hours on them--of Plaintiffs' counsel, defense counsel, and the Court. An attempt to support claims which have no basis in law or fact in this day of crowded dockets, can hardly be considered novel and thereby support additional amounts in fee awards. It is submitted that Plaintiffs have in no way prevailed on any type of novel theory in this case--let alone gone to the jury on any such theory.

The questions raised by this case were relatively simple. This was not a case of first impression. It did not involve complex anti-trust issues. It was not even a class action. It merely involved interpretation of constitutional law and tort law issues which courts and attorneys have been analysing throughout the history of our judicial system. Perhaps the only difficult question of this case is the one before the Court at this point; whether the award of shocking attorneys fees can be justified is a case of minimal jury verdicts on a very small percentage of the claims pleaded, and against a very few defendants sued.

C. FEE-PETITIONERS HAVE SHOWN THAT NO EXCEPTIONAL SKILL WAS REQUIRED TO PERFORM THE LEGAL SERVICES RENDERED HEREIN.

The next factor listed in **Johnson v. Georgia Highway Express, Inc.**, is the skill requisite to perform the legal services properly. Unlike many civil rights actions, where counsel are called upon to create consent decrees, and otherwise devise innovative methods of resolving the issues, here all that was required was standard trial court skills--nothing more exceptional than would have been necessary for the most mundane of personal injury suits. The Court is asked to look at the results obtained by counsel in the Court's analysis of the skills displayed. A multimillion dollar prayer--a three hundred twenty thousand non-negotiable demand--and a thirty-three thousand dollar recovery.

D. THERE HAS BEEN NO PRECLUSION OF OTHER EMPLOYMENT DUE TO THE ACCEPTANCE OF THIS CASE.

The fourth **Johnson v. Georgia Highway Express, Inc.**, factor is the preclusion of other employment due to acceptance of the case. Here the practice of each of the co-counsel will be examined individually.

According to Mr. Lopez's own affidavit attached to the motion for fees, he is a full-time university professor at U.C.L.A. Not only has he been able to continue his other employment, but, according to 3 U.C.L.A Law 15, Spring 1980, attached hereto as Exhibit "C" and incorporated herein by reference as though set forth verbatim hereat, Mr. Lopez, has received time and funding to study the exact same statute at issue in this case. Thus, we submit, Mr. Lopez has hardly been precluded from other employment due to the acceptance of this case, but rather has made this case one of the focal points of his other employment, for which, presumably, he has been fully compensated.

For many months this case has required of Roy Cazares no more than an hour or two per week of his attention. If one scrutinizes his affidavit carefully, it is easy to see that during 45 months of this 63 month case, he has spent less than two hours per week on this matter. Thus, while it appears from the general numbers that this case had a "life" of more than five years, such a figure is quite misleading in that for several months no work was done at all on this case, and during many other months no more than eight hours of Mr. Cazares' time per month were consumed by this case. Therefore, except for the time that was spent in trial, it seems that Mr. Cazares has hardly been precluded from accepting other employment. The post-trial time, as discussed above, to a certain extent, might well have been self-imposed preclusion of other employment due to the decision among co-counsel to have Mr. Cazares stand-by in Los Angeles for a week, rather than have Mr. Lopez, who was already in Los Angeles during that time period, remain on call.

E. THE COURT MUST EVALUATE COUNSELS' CUSTOMARY FEE.

Preston v. Mandeville, 451 F.Supp. 617 (S.D. Alabama 1978), a class action for contempt for failing to abide by a 1975 decree requiring adoption of random jury selection system, construed **Johnson v. Georgia Highway Express, Inc.,** to set forth the following guidelines on fees: "What is needed is the customary fee charged by these particular lawyers." **Preston, supra,** at 621. Thus, while the petitioners suggest an hourly rate in the Los Angeles area of $150.00 per hour, at no point do they inform the Court what their hourly rate is.

Moreover, where time is logged over a period of years, the rate must be based on the attorney's rate for each year, not just the 1980 rate in Los Angeles. Thus, while the fee-petitioners implied in their motion that the Court should consider inflation as a factor in setting their rate, they can hardly rightfully request that the Court both allow for inflation and base the hourly rate on 1980 dollars. As **Imprisioned Citizens Union v. Shapp**, 473 F.Supp. 1017 (E.D. Pa. 1979), sets forth, an attorney cannot be compensated at 1980 rates for hours logged over a five-year period; compensation must be apportioned over that time, at the rates normally charged during the period in which the work was performed.

In **Heigler v. Gatter**, 463 F.Supp. 802 (E.D. Pa 1978), a civil rights action against city police officers in which $11,566.00 was awarded to plaintiff on the basis of claims made for §1983, false arrest and imprisonment, assault, and battery, the court first computed the rate for counsel at $50.00 per hour for non-trial time, and $75.00 per hour for trial time, and then looked to the number of hours requested. The court acknowledged in that case, as in the one at hand, that where the time period consumed by the action is particularly long due to court scheduling difficulties, the plaintiffs' attorney is not entitled to additional fees. In our case, as the Court is well aware, counsel have been ready to go to trial for 28 months, although due to the court's crowded schedule, the trial scheduled originally for April 17, 1979, did not finally take place until late September 1980. Thus based on **Heigler, supra**, at 804, the long time span, over which this action continued--and was continued--was "primarily a function of scheduling difficulties rather than the complexity of the case," and does not form the basis for an award of additional attorneys fees.

F. THE CONTINGENT NATURE OF THE FEE DOES NOT NECESSARILY ENTITLE FEE-PETITIONER TO CARTE BLANCHE IN HIS AWARD.

While **Johnson v. Georgia Highway Express, Inc.** suggests that the court look to the contingent or fixed nature of the fee, this, in and of itself, is not determinative of the fee award issue. This aspect will be discussed in more detail below.

G. THERE WERE NO EXCEPTIONAL TIME LIMITATIONS IMPOSED BY THE CLIENT OR THE CASE.

Johnson v. Georgia Highway Express, Inc., suggests that time limitations imposed by the client or the case should be a factor the court should consider in awarding fees. The fee-petitioners in this case were never under the eleventh-hour gun on this case in that they were present within three weeks after the incident. They have had ample time throughout this litigation to carefully draft all of their pleadings and perform all discovery they felt necessary. The fee-petitioners were never in the position of picking up another attorneys scattered files two weeks before time of trial. They were never in a rush to avoid a statute of limitations deadline, and they could in all instances prepare their pleadings and schedule discovery in manner compatible with their calendars.

H. THE AMOUNT INVOLVED AND THE RESULTS OBTAINED REQUIRE A GREATLY DIMINISHED FEE AWARD THAN THAT SOUGHT.

As discussed above, there was a multi-million dollar prayer in this action. The fee-petitioners, however, only obtained thirty-three thousand dollars for their clients. This amount was little more than eight thousand dollars more than the last settlement offer made by Defendants (see affidavit of Jonathan Kotler filed herewith and incorporated herein by reference as though set forth verbatim herein). The fee-petitioners have relied heavily on the recent case of **Keith v. Volpe**, 86 F.R.D. 565 (C.D. Ca. 1980). This case involved a class action in a successful challenge to the Los Angeles Century Freeway project which resulted in the project's compliance with federal and state laws as well as affirmative action on housing programs. Counsel in **Keith** were able to negotiate a settlement to provide for minorities to be given certain preferential employment in the 20,000-man project that called for 4,200 units of low and moderate income housing with an estimated value of two hundred-fifty million dollars, therby conferring "substantial tangible benefits, both pecuniary and non-pecuniary, on the State of California and its inhabitants." **Keith, supra**, at 572. The counsel in **Keith** negotiated a final consent decree which set forth "a complex, but innovative settlement that promises to benefit the entire Southern California community for many years to come." **Keith, supra**, at 568. **Keith** is not talking about benefits to eight individuals in the amount of $33,350.00. That fee-petitioners in the instant action should analogize their case to **Keith** seems at once pretentious, preposterous, and totally misleading.

I. THE EXPERIENCE, REPUTATION, AND ABILITY OF FEE-PETITIONERS HAS NOT BEEN SHOWN TO BE OUTSTANDING

Unlike **Keith** where plaintiffs' counsel "provided first-rate legal services in successfully advocating the protection of the enviromental and human interest at stake in this lawsuit involving 1.5 billion dollar freeway construction project," the counsel in the instant case had only just begun practice when they began representing these eight Plaintiffs. Gerald Lopez had only been out of law school for one year, and Roy Cazares for only two years. In May of 1975, according to the affidavit of Mr. Cazares attached to the instant motion, he and Mr. Lopez started in private practice together. This was only three months before they were retained by the

Plaintiffs herein. Mr. Cazares's affidavit indicates that he has been involved with considerable litigation and civic activities over the past six years. (Apparently the instant case did not preclude Mr. Cazares in any way from other employment.) While it is not the intent of this Response to denegrate Mr. Cazares's civic involvement, such involvement does not in any way indicate a special expertise in the field of civil rights.

Mr. Lopez, on the other hand, has offered us no information whatsoever regarding his experience, reputation or ability. Moreover, Mr. Lopez refers to the "litigious nature of defendants" (see affidavit of Gerald P. Lopez, page 4, line 7). The Court's attention is drawn to this remark to point out that this is perhaps the first time it has ever been suggested that a defendant is litigious, as opposed to a plaintiff. As the Court is no doubt aware, Defendants in this suit did not seek this litigation, but Defense counsel would be doing disservice to their clients if they remained passive and acquiesced to fee-petitioners' demands without a whimper. That Defendants, and not Plaintiffs, prevailed on the overwhelming majority of plaintiffs' original demands speaks more eloquently than anything else of the "litigious" nature of parties herein.

J. FEE-PETITIONERS HAVE FAILED TO DEMONSTRATE THAT THIS PARTICULAR CASE WAS "UNDESIRABLE".

Another of **Johnson v. Georgia Highway Express, Inc.**'s twelve factors is the undesirability of the case. Referring to the affidavit of Gerald P. Lopez submitted with the instant motion on page 2, line 25, Mr. Lopez submits to the Court the fact that he teaches courses devoted exclusively to civil rights legislation and teaches a civil rights litigation seminar. Based on this fact, the case at hand can hardly be said to be "undesirable" to Mr. Lopez. On the contrary, this is precisely the type of case which, to Mr. Lopez, should be the most desirable. Similarly, Roy Cazares also represents himself to have a "general practice with a strong emphasis on civil rights" (see affidavit of Roy B. Cazares attached to the instant motion, page 3, line 21). Unlike the pioneering attorneys who intially risked their practices to represent the indigent and the downtrodden, Messrs. Cazares and Lopez have in fact built their practice on representing plaintiffs in civil rights cases. As discussed earlier, Plaintiffs in this case were neither disenfranchised immigrant workers, nor prisoners without access to law libraries, nor students deprived of decent education, nor families denied adequate housing. Rather, these Plaintiffs were fully employed, middle-class home owners and residents in the City of Riverside. Fee-petitioners herein have made some attempt by innuendo to change the character of

Plaintiffs herein as it suits their need. During the time of trial the Plaintiffs were characterized as middle-class, law-abiding property owners. Now, for the purposes of obtaining fee awards, the fee-petitioners have implied that Plaintiffs are the meek and downtrodden. The jury by limiting its verdict to $33,350.00 in a purportedly multi-million dollar case has indicated how it characterizes the Plaintiffs herein.

The Court is no doubt aware of the press coverage and publicity given to the instant action. Needless to say, such "free advertising" hardly makes this case undesirable, especially for attorneys who purportedly specialize in civil rights litigation. (See Los Angeles Times article dated November 16, 1980, previously referred to herein and attached hereto as Exhibit "A" and incorporated by reference as though set forth verbatim). In this article Mr. Cazares was specifically identified by name and quoted about this case.

K. FEE-PETITIONERS HAVE FAILED TO GIVE ANY GUIDELINES TO THE COURT REGARDING THEIR PROFESSIONAL RELATIONSHIP WITH THEIR CLIENTS.

Johnson v. Georgia Highway Express, Inc. suggests that one other factor to consider in the award of attorneys fees is the nature of the professional relationship with the client. Fee-petitioners have offered absolutely no guideline whatsoever to the Court regarding the professional relationship they have with their clients. There has been no suggestion as to whether they have an on-going relationship, or whether they had not represented these clients before.

L. THE COURT MUST LOOK AT AWARDS IN SIMILAR CASES.

In looking to fee awards in other public interest cases, **Keyes v. School Dist. No. 1, Denver, Colo.**, 439 F.Supp. 393, 413, (D. Colo. 1977), supplied a list of fees which had been awarded in civil rights litigation:

> "$5.00/hour--**Spero v. Abbott Laboratories**, 396 F.Supp. 321 (N.D. Ill. 1975)
> $12.00/hour--**Brito v. Zia**, 478 F.2d 1200 (10th Cir. 1973)
> $14.00/hour--**Peltier v. City of Fargo**, 533 F.2d 374 (8th Cir. 1976)
> $22.10/hour--**Davis v. Board of School Commissioners**, 526 F.2d 865 (5th Cir. 1976)
> $20.00/hour for office work, $30.00/hour for court work--**Wyatt v. Stickney**, 344 F.Supp. 387 (M.D. Ala. 1972); **Thompson v. School Board**, 363 F.Supp. 458 (E.D. Va. 1973), aff'd, 498 F.2d 195 (4th Cir. 1974).

$20.00/hour for office work, $40.00/hour for court work--**Latham v. Chandler**, 406 F.Supp. 754 (N.D. Miss. 1976).

$30.00/hour average, $50.00/hour for appeal to United States Supreme Court--**Norwood v. Harrison**, 410 F.Supp. 133 (N.D. Miss. 1976).

$50.00/hour--**Stanford Daily v. Zurcher**, 64 F.R.D. 680 (N.D. Ca. 1974); **Wallace v. House**, 377 F.Supp. 1192 (W.D. La. 1974).

$50.00 to $70.00/hour depending upon experience--**Torres v. Sachs**, 69 F.R.D. 343 (S.D. N.Y. 1975), aff'd, 538 F.2d 10 (2d Cir. 1976).

$64.80/hour--**Swann v. Charlotte Mecklenburg Bd. of Education**, 66 F.R.D. 483 (W.D.N. C. 1975).

$65.00/hour--**Davis v. County of Los Angeles**, 8 E.P.D. §9444 (C.D. Cal. 1974).

3.

FEE-PETITIONERS REQUEST FOR COMPENSATION IS DEFECTIVE IN FORM IN THAT HOURS AND RATES ARE NOT ITEMIZED.

The itemization of hours and specification of the rates submitted by Mr. Lopez was not done in his affidavit. According to **Keown v. Storti**, 456

F.Supp. 232 (E.D. Pa. 1978), such a defect must be remedied. When Mr. Lopez cures this defect however, **Heigler v. Gatter,** 463 F.Supp. 802 (E.D. Pa. 1978), requires that any figure that Mr. Lopez reconstructs is suspect and must be reduced approximately 20 percent because of his failure to keep contemporaneous time records.

4.

ONLY SERVICES RENDERED FOR THIS PARTICULAR CASE SHOULD BE COMPENSABLE.

As this Honorable Court may be aware, there is currently pending a separate lawsuit filed by eighteen of the original Defendants, who were dismissed from the instant action, against Plaintiffs. (Albee v. Rivera C.A. No. 78-3319 D.C. No. 78-2076, United States

Court of Appeals for the Ninth Circuit.) That is a different case originally brought in the state court for malicious prosecution. Any fees counsel charged for defense of that proceeding which were included in the award presently sought, would be for fees not for services rendered in this case, and therefore, are not compensable by this motion. From the face of the affidavits of Mr. Lopez and Mr. Cazares, it is not apparent how much of the time spent by counsel was connected with the Albee case. According to **Keown v. Storti**, 456 F.Supp. 232 (E.D. Pa. 1978), time spent by counsel on this related Albee matter must be subtracted from the time requested in the instant motion.

5.

ANY ATTORNEYS FEES AWARDED MUST BE PROPORTIONATE TO THE RECOVERY IN THE UNDERLYING SUIT.

Originally these eight Plaintiffs had presented six separate claims against 32 Defendants, for a total of 1,536 claims. The jury, however, provided recovery on only 37 of these 1,536 claims. Any fees awarded must take into account this disparity. In **Scheriff v. Beck**, 452 F.Supp. 1254 (D. Colo. 1978), a civil rights action, the court concluded that where plaintiff prevailed in his civil rights action against one defendant but did not prevail with respect to another defendant, the civil rights statute permitted fees to be awarded, but only as to sums reasonably expended against the defendant over whom plaintiff prevailed. In **Scheriff, supra**, at 1259, the court suggested:

> "Where, as here, plaintiff prevailed as to only one of the two defendants and has demonstrated no way in which to aportion his time, the court will simply cut the fee request by one-half."

The **Scheriff** court then looked to Plaintiff's success on his three separate claims and observed that he had recovered on only one. As a result, the court reasoned, "any recovery should take into account this disparity." **Scheriff, supra**, at 1259. The **Scheriff** court concluded at 1260 in this case however, that,

> "While we would normally apply the proportionate recovery rule, we need not do so here. In this case, in the exercise of our discretion, the court has decided to withhold any award of fees in favor of plaintiff. . . . It is recognized that in some cases, while a plaintiff may sustain his claim of civil rights violations,

> an attorney's fee award is simply not appropriate. Such a case was **Sprogis v. United Airlines, Inc.**, 517 F.2d 387 (7th Cir. 1975). There plaintiff obstentiably brought suit against the airline for violation of Title VII, 42 U.S.C. §2000e et seq., through the employers no marriage rule. The District Court had awarded plaintiff $10,408.00 and thereafter, plaintiff filed an application for $45,000.00 in attorney's fees. The court denied the application on a variety of grounds, including the fact that plaintiff was not the real party in interest (the real party having already reached a "class-action accord" with the , airline), that the precedential value of the suit was limited, that the suit was not of the type envisioned by Congress in passing the underlying legislation, and that the claim for fees was not proportionate to the recovery." (emphasis added.)

The Scheriff court was outraged by the disparity between the fee request and the amount of recovery: plaintiff's fee and cost request was some 40 times the amount of his recovery. Based upon the facts in **Scheriff** the court denied the plaintiff's motion for an award of any fees and costs. In the within case, fee-petitioners are seeking an award nearly 16 times the amount of the jury award to the plaintiffs.

Similarly, the court in **Keown v. Storti**, 456 F.Supp. 232 (E.D. Pa. 1978), limited the amount of an attorneys fees award to plaintiff to the extent that he was successful in asserting his claims. **Keown** held further that for the purposes of fees act, defendants who successfully defend all claims asserted against them are "prevailing parties" and are therefore entitled to fees. **Keown**, supra, at 243.

In **Keyes v. School Dist. No. 1, Denver, Colo.**, 439 F.Supp. 393 (D. Colo. 1977), plaintiffs and intervenors sought fees, costs, and expenses as prevailing parties. The court addressed this specific issue, and concluded that the award should be limited to the extent to which Plaintiffs and intervenors actually prevailed in litigation.

> "Some courts have discounted requests for attorneys' fees by an amount comparable to the extent to which parties did not prevail. E.g. **Schaeffer v. San Diego Yellow Cabs, Inc.**, 462 F.2d 1002, 1008 (9th Cir. 1972); **Armstead v. Starkville Mun. Sep. School Dist.**, 395 F.Supp. 304, 312 (N.D. Miss. 1976); **Chance v. Board of Examiners**, 70 F.R.D. 334 (S.D. N.Y. 1976). While certain jurisdictions have rejected this position **Stanford Daily v. Zurcher**, 64 F.R.D. 680 (N.D. Calif. 1974), the Tenth Circuit has adhered to the reduction rule. In **Pearson v. Western Electric Co.**, 542 F.2d 1150, 1153, (10th Cir. 1976), the court stated: 'It is only when a party has prevailed in a court action that he may be entitled to attorney's fees proportionate to the extent of his recovery. **Williams v. General Foods, Corp.**, 492 F.2d 399, 409 (7th Cir. 1974); **Schaeffer v. San Diego Yellow Cabs, Inc.**, 462 F.2d 1002, 1008 (9th Cir. 1972).' (emphasis added).

> Thus, we are of the view that attorneys fees should be awarded to plaintiffs and intervenors but that awards should be limited to the extent to which they prevailed in this litigation."

In **Keyes** the court found that the intervenors and plaintiffs prevailed to an extent of 85% of the recovery requested by them, and accordingly, after determining an appropriate fee, the award to the intervenors and plaintiffs was reduced by 15%.

In cognizance of Chief Judge Seitz' admonition in **Hughes v. Repko**, 578 F.2d at 486 against the use of an automatic fractional reduction of the lodestar, Joseph S. Lord, Chief Judge nonetheless, hand no choice but to decrease the award by the percentage plaintiff lost claims in **Imprisoned Citizens Union v. Shapp**, 473 F.Supp. 1017 (E.D. Pa. 1979), because fee petitioning counsel failed to give any guideline as to what portion of their time was spent on compensable, prevailing, issues.

6.

USE OF A "MULTIPLIER" OR A "BONUS" IS NOT MERITED.

In **Heigler v. Gatter**, 463 F.Supp. 802 (E.D. Pa. 1978), the District Court held that plaintiffs counsel was entitled to a fee award of $5,725.00, computed at a rate of $50.00 per hour for non-trial time and $75.00 per hour for trial time, in addition to $523.40 for unreimbursed costs. This award was following successful civil rights litigation against two city police officers in which $11,566.00 was awarded to plaintiffs. Plaintiff, an individual, brought the action under 42 U.S.C. 1983 and alleged pendent state claims for false arrest and imprisonment, assault, battery, and malicious prosecution. The **Heigler** court found that "Plaintiff's counsel conducted the case in a competent manner worthy of someone with his skill and experience. These factors were adequately compensated in considering a reasonable hourly rate and there was not unusual performance justifying an increase in this case." **Heigler, supra,** at 805.

The court reached its decision upon the theory that "any addition to or subtraction from the lodestar to account for the quality of an attorney's work 'is designed to take account for an unusual degree of skill, be it unusually poor or unusually good.'" **Baughman v.**

Wilson Freight Forwarding Company, 583 F.2d 1208, 1218 (3rd Cir. 1978) quoting **Lindy Brothers Builders of Philadelphia v. American Radiator & Standard Sanitary Corp.**, 487 F.2d 161, 168 (3rd Cir. 1973); see **Lindy Brothers Builders of Philadelphia v. American Radiator & Standard Sanitary Corp.**, 540 F.2d 102, 117 (3rd Cir. 1976) (Lindy II). **Heigler** continued,

> "the contingency factor does not justify an increase for several reasons. This case was neither factually nor legally complex. **Lindy II supra**, at 117. This lack of complexity manifested itself in a risk of relatively small number of hours being expended without compensation. Id. Finally, where 'the lodestar as originally calculated by the district court [is] a significant amount in comparison to the amount awarded plaintiff in damages,' the court should be reluctant to increase the lodestar through the contingency factor. **Baughman, supra**, at 1218. In this case, the lodestar

> constitutes a substantial percentage of the recovery received by plaintiff. Therefore, we conclude that no further adjustment to the lodestar is warranted." **Heigler, supra**, at 805

In another civil rights case, **McPherson v. School Dist. , No. 186, Springfield, Ill.**, 465 F.Supp. 749 (S.D. Ill. 1978), ths court found that a multiplier of the hourly rate should not be used in that it was not permitted by the federal statute mandating an award to plaintiffs of attorneys fees and costs in civil rights litigation. See **McPherson, supra**, at 764.

Likewise, the court in **Oliver v. Kalamazoo Board of Education**, 576 F.2d 714 (6th Cir. 1978), construed 42 U.S.C. §1988 in light of 20 U.S.C. §1617 to only provide for recovery of a "reasonable attorney fee". The court in **Oliver** recognized that multipliers had been used in anti-trust cases, but found the use of such cases as analogus to civil rights cases with respect to the attorney's fee issue inapposite since there is usually a large monetary recovery in anti-trust cases. **Oliver** went on to say "attorneys fees awards should be high enough to attract competent counsel, yet not so high as to provide a windfall for them. Multiplying the number of hours properly spent times a reasonable hourly rate is sufficient to serve this goal." **Oliver, supra,** at 716.

The contingency nature of this action was not unusual enough to warrant an increase in lodestar. As stated in **Imprisoned Citizens Union v. Shapp,** 473 F.Supp. 1017, 1027 (E.D. Pa. 1979),

> "Success here, albeit uncertain, was not so remote a likelihood

> that counsel deserves to be compensated simply for taking the case. For over a decade, litigation of this sort has not been a stranger in the federal courts and the contingencies involved in bringing this suit are, to a great extent, foreseeable, and not extraordinary."

7.

CASES CITED BY FEE-PETITIONERS IN SUPPORT OF USE OF A MULTIPLIER ARE DISTINGUISHABLE.

Fee-petitioners, in their Memorandum of Points and Authorities in support of the instant motion, have contended that the use of a multiplier is appropriate in this case. To support their contention they have cited several cases which will be discussed individually at this point.

The first case presented by fee-petitioners is **Lindy Brothers Builders, Inc., of Phila. v. American Radiator & Standard Sanitary Corp.**, 487 F.2d 161

(3rd Cir. 1973). Lindy is the leading anti-trust attorneys fees case. Unlike the instant action, **Lindy** was a class-action. It was the court's task, upon the petitioners' request, to determine the proper award of attorneys fees to be paid from the settlement of the class action according to the equitable fund doctrine in an attempt to have the benefited parties pay the fees. It was as a result of a settlement agreement entered into therein that a single fund was created to satisfy the claims of all of the plaintiffs as well as those who had not filed suit. Attorneys fees were to be paid from this single fund, thus, in **Lindy**, the defendants were paying for plaintiffs attorneys fees only indirectly as part of the total settlement. Defendants were not required to pay plaintiffs' attorneys fees in addition to the recovery by plaintiffs. The attorneys fees were merely a piece of the larger settlement pie. This is not at all like the case at hand where individual plaintiffs received individual specific awards by way of jury verdict, and now fee-petitioners request additional sums to be paid by Defendants as attorneys fees.

Similarly, in **In Re Gypsum Cases**,386 F.Supp. 959 (N.D. Ca 1974), another anti-trust action, the court also applied the equitable fund doctrine: that is, it awarded attorneys fees out of a pre-determined settlement amount.

The third case raised by the fee-petitioners is **Philadelphia v. Charles Pfizer & Co. Inc.**, 345 F.Supp. 454 (S.D.

N.Y. 1972). This case is another example of an anti-trust class action creating a settlement fund from which attorneys fees were awarded, and is also one in which there was a prior agreement between counsel regarding the award of fees.

The next case cited by fee-petitioners is **Arenson v. Board of Trade of City of Chicago**, 373 F.Supp. 1349 (N.D. Ill. 1974) in which fee-petitioners claim a multiplier of four was awarded. Unfortunately, **Arenson** was miscited, and defense counsel have been unable to locate it at this point in time. Perhaps the fee-petitioners might supply defense counsel with a corrected citation or a copy of this case, so that they might be able to determine whether

Arenson is another anti-trust class action equitable fund doctrine case.

Finally, fee-petitioners refer to an unpublished opinion in **Goldstein v. Alodex Corp.**, Civ. No. 71-1857 (E.D. Pa. December 7, 1973), in which they claim a multiplier of five was awarded. This case is likewise unavailable to defense counsel--as Plaintiffs attorneys must be well aware.

And, again, fee-petitioners refer us to **Keith v. Volpe**, 86 F.R.D. 565 (C.D. Ca. 1980), to support the use of a multiplier, albeit even this case has applied the common fund, common benefit doctrine and has instructed at 571:

> "The Supreme Court limited this doctrine in **Alyeska Pipeline Service Co. v. Wilderness Society**, 421 U.S. 240 (1975), to those cases where the members of the benefited class are sufficiently identifiable and the tangible

> benefits sufficiently ascertainable so that fee shifting would 'with some exactitude' shift the costs of litigation to those benefiting from the suit. Id. at 265 N.39. See also **U.S. v. Imperial Irrigation District**, 595 F.2d 525, 529 (9th Cir. 1979); **Reiser v. Del Monte Properties Co.**, 605 F.2d 1135, 1139 (9th Cir. 1979)."

The common benefit doctrine requires that an action must confer substantial benefit on others (i.e. shareholders), persons benefited must comprise an ascertainable class, and the award of attorney fees must operate to shift the cost of litigation to such a group. **Reiser v. Del Monte Properties Co.**, 605 F.2d 1135 (9th Cir. 1979). Here there has been no showing that an ascertainable class of persons benefited from the award of $33,350.00 to the eight plaintiffs; nor has there been showing that all the citizen-taxpayers of the City of

Riverside gained from this suit. It is in reality those taxpayers who would be asked to pay the cost of this suit by increased insurance premiums on the municipal coverage.

U.S. v. Imperial Irrigation Dist., 595 F.2d 525 (9th Cir. 1979), examined the "substantial benefits" doctrine and observed:

> "justification for this exception [to the traditional rule disfavoring awards shifting legal fees] is that identifiable persons who benefit substantially from the action of the party seeking fees should share the costs. 'To allow the others to obtain full benefit from the plaintiff's efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff's expense.' **Mills**, 396 U.S. at 392, 90 S.Ct. at 625. See also **Hall v. Cole**, 412 U.S. 1, 5-6, 93 S. Ct. 1943, 36 L.Ed.2d 702 (1973). However, because the beneficiaries frequently are not parties or members of a certified class before the court, this

exception is subject to an important limitation that bars an award in this case. The limitation is that there must be before the court a party against whom the court can assess fees who stands in such a relationship to the benefited class that the award will 'operate to spread the costs proportionately' and 'with some exactitude' among the identifiable beneficiaries of the fee-seeker's success. **Mills** 396 U.S. at 394, 90 S.Ct. at 626; **Alyeska,** 421 U.S. at 265 n.39, 95 S.Ct. 1612. Only when this is true will attorney's fees be effectively spread among those who stand to gain from the litigation without contributing to it, rather than simply being shifted to the loser. (As the **Mills** court put it: '[t]o award attorneys' fees in such a suit to a [successful] plaintiff . . . . is not to saddle the unsuccessful party with the expenses but to impos them on the class that would have had to pay them had it brought the suit.' **Mills v. Electric Auto-Lite Co.,** 396 U.S. 375, 396-97, 90 S.Ct. 616, 628, 24 L.Ed.2d 593 (1970). See also **Hall v. Cole,** 412 U.S. 1, 6, 93 S.Ct. 1943, 36 L.Ed.2d 102 (1973).)

The two leading Supreme Court cases are illustrative. In **Mills,** a shareholder prevailed in an action to set aside the merger of his corporation into another because in recommending approval of the merger the directors of his corporation had failed to disclose that they were controlled by the acquiring company. The Court shifted the shareholder's attorney's fees to the corporation because the suit conferred a substantial benefit on all shareholders and the corporation itself, and because '[T]he court's jurisdiction over the corporation as the nominal defendant ma[kes] it possible to assess fees against all of the shareholders through an award against the corporation." 396 U.S. at 395, 90 S.Ct. at 627. All shareholders benefited from vindication of the securities fraud rules and, by requiring the payment of the counsel fees from the corporate treasury, all would be taxed their proportionate share of the costs through lowered dividends. The reasoning in **Hall v. Cole** is similar: the plaintiff-union member vindicated the rights of free speech in union affairs and thus 'rendered a substantial service to his union as an institution and to all of its members' (412 U.S. at 8, 93 S.Ct. at 1948); shifting plaintiff's counsel fees to the union would effectively charge all of the members with the cost of achieving the common benefit

> by taking a share of each member's dues.
>
> . . .
>
> Ready identifiability is required to insure clear, concrete evidence that the fee-seeker's efforts produced actual benefits to others, and that fees are assessed only against beneficiaries--those who would by unjustly enriched by not sharing in the cost of producing the benefit--and not against persons whose positions are not substantially bettered because of the victorious lawsuit.

Thus it is apparent that the substantial benefits doctrine is inapplicable in this case because Plaintiffs have totally failed to show that anyone other than they themselves will benefit from this suit.

The Court's attention is directed to the fact that there simply was no common fund, equitable fund, or any other fund created in this case. The jury awarded each individual Plaintiff funds in specified amounts for specified damages.

8.

DOWNWARD ADJUSTMENT OF THE OBJECTIVE VALUE OF COUNSEL'S SERVICES IS REQUIRED WHERE ONLY A FEW CITIZENS HAVE BENEFITED AND NO WIDESPREAD OR PERVASIVE VIOLATIONS OF CIVIL RIGHTS HAVE OCCURRED.

Once again, the Court's attention is directed to **Keown v. Storti**, 456 F.Supp. 232, 242 (E.D. Pa. 1978). The court in **Keown** on its own initiative, adjusted the objective value of counsel's services downward:

> "This case vindicated the rights of only one person--Robert Keown. It was not a class action. It did not produce any new law that, through stare decisis, will greatly benefit others. The violation that was remedied was not widespread or pervasive; indeed, the jury found that Defendant Storti acted unlawfully only with respect to Robert Keown

> and not as to his wife. Although redress of any civil rights violation advances the public interest, the advancement in this case was minimal. The $2,500.00 damage award, which, in my view, was far in excess of proven compensatory damages, provided the Plaintiff more than full compensation for his injury." (emphasis added)

Thus, as in **Keown**, Plaintiffs in the instant action have been compensated for all injury. This is particularly so when, as here, Plaintiffs counsel offered at trial evidence of less than $300.00 in damages.

9.

BONUSES ARE NOT AVAILABLE UNDER 42 U.S.C.§1988.

> "Since the purpose of Title 42, U.S.C.A. §1988, is to assure private civil rights litigants of representation rather than to provide windfalls to attorneys, the Court is convinced that the request for bonuses is due to be

> denied. **Preston v. Mandeville,** 451 F.Supp. 617, 623, , (S.D. Ala. 1978)."

In **Preston,** the court not only addressed the issue of bonuses but also analyzed whether or not such a civil rights case was "undesirable" in relationship to counsel's request for a bonus:

> "The **Johnson [Johnson v. Georgia Highway Express, Inc.,** 488 F.2d 714 (5th Cir. 1974)] court was concerned about the economic impact that the acceptance of a civil rights suit might have on an attorney's law practice. Counsel for the plaintiffs assert that the 'undesirability' of this particular case and civil rights cases in general 'is evidenced by relatively few members of the Mobile Bar who have chosen to represent plaintiffs in cases of this nature.' This is not within the scope of 'undesirability' as envisioned by the **Johnson** opinion. The Court has already noted that Hicks and Mandell [counsel in the **Preston** case] do a great deal of civil rights work, and that Brown's law firm is similarly engaged. Under these circumstances the Court is convinced that no malevolent economic effect will be felt by these

> attorneys; indeed the experience and reputation gained from such proceedings will no doubt aid each in their future practice." **Preston, supra,** at 622.

10.

THERE IS NO STAUTORY RIGHT TO PAYMENT OF OUT-OF-POCKET EXPENSES.

Overhead is not a compensable cost. Postage, clerical and typing services, reproduction, mailing, long-distance telephone calls, secretarial overtime and transcript have all been considered by the courts to be regular office overhead and not a compensabile cost. **Keith v. Volpe,** 86 F.R.D. 565 (C.D. Ca. 1980); **Cole v. Tuttle,** 462 F.Supp. 1016 (N.D. Miss. 1978).

Similarly, travel expenses and long-distane phone call expenses incurred by Mr. Cazares in this case should be reduced as it was done in **McPherson v. School Dist. No. 186. Springfield, Illinois, supra**, at 763, with regard to the selection and use of out-of-town counsel. Courts have been mixed in their determination of whether law clerks and paralegals should be included in an award of attorneys fees. Both **Oliver v. Kalamazoo Board of Education**, 576 F.2d 714 (6th Cir. 1978) and **Scheriff v. Beck**, 452 F.Supp. 1254 (D. Colo. 1978) have held that paralegal and law clerk services are merely part of attorney's overhead and should not be considered in an award of attorneys fees.

11.

FEE-PETITIONERS ARE NOT ENTITLED TO AN INERIM AWARD OF FEES

Fee-petitioners in their memo of points and authorities attached to the instant motion have contended that they are entitled to an interim award of fees. Defense counsel herein have difficulty comprehending the nature of fee-petitioners request, as well as the applicability of cases cited by fee-petitioners to support their contention. **Schaeffer v. San Diego Yellow Cabs, Inc.**, 462 F.2d 1002 (9th Cir. 1972) totally fails to address the issue of interim fees. Likewise, **Davis v. County of Los Angeles**, 8 E.P.D. §9444 (C.D. Ca. 1974), also totally fails to address the issue of an interim award of fees. In **Malone v. North American Rockwell Corp.**, 457 F.2d. 779 (9th Cir. 1972), the court awarded $2,500.00 in attorneys fees for services on the appeal "that amount having been stipulated to as reasonable by North American's counsel." **Malone, supra,** at 781. This, too was not an "interim" award.

We agree with fee-petitioners that an award of attorneys fees can be an integral part of the relief sought in a civil rights action and therefore the judgment is not final and appealable until they have been set by the Court, after proper request for same.

However, are Plaintiffs' counsel implying by the request for an award of attorneys fees in the instant case, that they should be paid whatever sum they have request at this point, regardless of whether the Defendants should choose to appeal such an award? Where is the statutory or case law authority for such a request? It is not reasonable to conclude that such an award of interim fees is implanted in the Civil Rights Act.

12.

THE ECONOMIC IMPACT OF FEE AWARDS MUST BE EXAMINED BY THE COURT.

Recent cases have suggested that the Court must be cognizant of the economic impact of monetary awards where the financial risk, or burden, is shifted from one party to another. Such a shift must result in the greater good, i.e. lower cost, redressed wrong, to benefit the larger group of persons. Here, as in **Oliver v. Kalamazoo, supra**, at 718, there is being created a tax-payers' burden, for it is the Riverside taxpayer who is being asked to pay Mr. Cazares and Mr. Lopez. This is because, although the City is covered by insurance, the insurance premiums are paid by tax dollars. Just as automobile insurance rates increase with sizeable claims and recoveries, so do insurance rates for municipalities. The cost to the tax-payers who have been requested by fee-petitioners to pay their fees must be weighed as compared to the benefit to the eight individual Plaintiffs in the instant action and, of course, their two attorneys.

As in **Keyes v. School Dist. No. 1, Denver, Colo, supra**, at 415, it must be remembered that the public must bear the financial burden and that "attorney fee entitlement cannot jeopardize the financial realities of the agency paying the fee;" in this case, the City of Riverside. It was found in **McPherson v. School Dist. No. 186, Springfield, Ill., supra,** at 757, that "Defendant is a public body and a fee award is essentially reallocating a portion of the property tax area residents pay [from one civic benefit to another]. . . . It is incumbent [on the court] to scrutinize Plaintiffs' fee request to assure the public is not overcharged."

DATED: December 31, 1980.

Respectfully submitted,
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LOS ANGELES TIMES
METRO

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Local News
CC Part II

Latinos, Police Both Claim Lawmen Hope Barrio Controversy Ends

By LORRAINE BENNETT, Times Riverside-San Bernardino Bureau

On the night of Aug. 1, 1975, as Riverside sweltered in sticky summer heat, Jennie and Santos Rivera prepared a bachelor party for their nephew.

Guests began to arrive and gathered in the Riveras' open garage, where they sat drinking and talking.

From time to time, a black and white unit from the Riverside Police Department cruised by, patrolling the loose confines of Casa Blanca, Riverside's explosive Latino barrio, where the password is violence.

Accounts vary now, five years later, about who started what. But the clash between the Riveras' guests and Riverside police that August night resulted in 51 arrests - the largest number ever jailed from a single incident in Riverside history.

At least two Latinos suffered injuries, and one police officer was hurt so seriously he was forced to retire from the force.

In the wake of the arrests came two trials. The first was a criminal case in which three of the party guests were convicted and received sentences ranging from probation to fines and 30 days in jail.

The second trial, stemming from a lawsuit filed against the City of Riverside and its police department, ended

Oct. 7 when a federal jury in Los Angeles awarded a total of $33,850, plus lawyers' fees, to eight Latinos and found the police guilty of violating their civil rights.

Attorneys for the Latinos plan to seek an increase in the amount of damages when they return to court Dec. 15.

In spite of what they consider to be small awards, they view the decision as a significant civil-rights victory because it marks the first time such convictions have been returned against Riverside police.

To police, however, the amount of damages is a message from the jury that the officers acted with some justification. They hope the jury's decision will bring an end to five years of controversy between authorities and residents of the barrio.

Unlikely That Hard Feelings Will End

It appears unlikely, however, that hard feelings among the Casa Blanca Latinos will end now. This is a small ethnic pocket originally carved from citrus groves by Mexican farm workers. It lies south of Interstate 91, a square-mile community far removed in concept from the rest of Riverside.

With its ethnic graffiti and spectacular sidewalk murals, Casa Blanca carefully guards its identity against encroaching industrial development and tract housing.

The barrio has gained national notoriety as an infamous battleground where two warring Latino families have engaged in a blood feud that began 16 years ago between drinking partners in a local bar.

The feud has escalated since the mid-1970s. Eight members of the two feuding families, the Ahumadas and Lozanos, have been gunned down during such simple activities as sitting on a front porch or strolling down the street.

Tension already was thick in Casa Blanca on Aug. 1, 1975, when Jennie Rivera and her husband Santos prepared to open their comfortable, well-groomed home for an evening in honor of nephew Lee Roy Rivera's upcoming wedding.

Mrs. Rivera does not, to this day, consider her home a part of Casa Blanca. But boundaries blur in neighborhood communities. Although the barrio proper lies half a mile away in Jennie Rivera's mind, to Riverside police, her house is still within Casa Blanca's "sphere of influence," and when any crowd gathers there, police take notice.

As a matter of course, officers already were patrolling the Riveras' neighborhood in strengthened numbers that night. An Anglo family had argued with a Latino family. In the exchange of insults, the two groups had been seen sitting in their front yards with rifles across their laps. Police patrols had increased.

So as the Friday night party crowd gathered at the Rivera house, police patrols were already cruising the neighborhood and the crowd took notice.

Time and emotion have distorted the sequence of events of that evening. Police claim the first incident involved a minor carrying a cup of beer. They say he came from the Rivera house.

Police say they did not pursue that violation, but when they received a prowler report and saw two other youths scurry away, and when a pickup truck rolled down the street with its lights blinking and the driver displaying open containers of alcoholic beverages, the police decided to investigate.

During the interrogation, police say, a group of Latinos from the Rivera party interferred, a scuffle broke out and the group began throwing dirt clods, rocks and bottles at officers.

Police called for reinforcements. Additional units and a police helicopter arrived, and the party goers retreated into the Rivera house.

An order to disperse, given over the helicopter loudspeaker was ignored, police say, and they were forced to use tear gas to flush the crowd from the house.

The Latinos claim they never heard such an order, that police first told them to go inside, then tear gassed them out.

Jennie Rivera has a vivid recollection of stumbling, blinded by tear gas, through her front door and coming face to face with lines of uniformed officers, one line kneeling in front of the other.

They were pointing rifles at the house, she says. Police, however, say no rifles were in use that night, and that regulation shotguns remained in police vehicles. What Mrs. Rivera saw may have been batons in the hands of officers, police say.

One of the Latinos, Jerome Rivera, a brother of the guest of honor, was hit over the head in a scuffle with police. Witnesses say another party goer, Manuel Flores, Jr., was struck so hard an officer felt for his pulse.

Police contend Jerome Rivera assaulted an officer with a belt he had wrapped around his hand. They say Flores threw a large dirt clod at officers.

Mrs. Rivera is certain that what she saw was rifles. She contends the people attending her party were herded together like cattle, handcuffed and carted off to the police station although, she says, they had done nothing wrong.

Charges against most of those arrested were dropped shortly afterward. In early 1976, a Riverside jury convicted two men and a women on charges that included battery against a police officer and resisting arrest. Their sentences ranged from probation to fines of $190 and 30 days in jail.

The jury failed to return a verdict on three more Latinos accused by police. The district attorney's office requested dismissal of charges against two others.

In June, 1976, eight Latinos filed suit against the City of Riverside, the police chief and 31 officers for violating their civil rights, false arrest and imprisonment, malicious prosecution and negligence. They sued for $9.75 million and requested a jury trial.

Eight Settled for $16,000

The civil suit also accused the police of conspiring to cover up the events of Aug. 1 by filing false reports.

Other issues in the case included whether the Latinos had heard and understood the order to disperse, whether police actually witnessed persons committing arrestable offenses and whether officers used undue force in making the arrests.

When the federal jury in Los Angeles finally handed down its decision, it found the police department and four officers guilty of violating the civil rights of eight Latinos during the disturbance.

It found no evidence that police conspired to cover up what had actually occurred by filing inaccurate reports.

"We're just glad it's over," said Deputy Police Chief L. L. (Sonny) Richardson, a sargeant on the police force in 1975 and one of the defendants in the case.

"As long as that lawsuit was hanging, it had a chilling effect on (police) relations with the Casa Blanca community."

Richardson feels what happened five years ago was "another time and place." Changes have been made, including the installation of a new police chief and better training for officers in dealing with barrio disturbances, he said.

Richardson is one of those who believe the jury sent the police department a message by awarding what has been considered a low sum to the Latinos.

'Compassion For The Plaintiffs'

"I think they felt the police acted with cause," Richardson said. "I don't think the jury set out to punish the police department, but I think they felt some compassion for the plaintiffs, too, that they were deserving of some award."

Although Jennie Rivera sees the award as "a big step for us and for the Mexican community" and a vindication of "standing up for our rights," Jerome Rivera, who received more that $6,000 for civil rights abuses, false arrest and negligence, was not satisfied.

Now when a problem develops in his neighborhood, Rivera says, he will not bother to call the Riverside police for help.

"Whoever they send might be one of them (the convicted officers). By fighting for my rights I'm going to have to give up a few."

And so the hard feelings continue to smolder. U.S. District Court Judge Mariana Pfaelzer said the jurors made no comment on the low monetary award when they returned 37 verdicts against Riverside police.

The judge did say, however, that if Riverside police are construing the sum to mean they had done nothing wrong, they are in error.

"If the jury found for the plaintiffs, they (Riverside police) certainly did something wrong," the judge said. "But actually, it is improper for me to answer that kind of question."

Renee Wong of Los Angeles, who served as jury forman, said the jury had no idea the Latinos had sued for such a large sum in damages.

Roy Cazares, attorney for the plaintiffs, said he elected not to raise the issue of $9.75 million in damages during the actual testimony because "I didn't think we had proved that amount in damages."

"We wanted the Riveras to get something for putting up with the case for five years. But we didn't see any strong evidence to tell us to give them a whole lot of money, either," Wong said.

'We Thought They Were Wrong'

At the same time, the jury wanted the Riverside police to know "we thought they were wrong, to slap their wrists, so to speak," she said.

The jury reached the point where members asked the judge for guidelines in awarding damages in the civil liberties suit, "but she sent back word to use our own good judgment," Wong said.

Deloris Lukens of Hemet, a member of the jury, said jurors did not have enough proof for an airtight case against police.

Juries traditionally make low awards in civil rights cases because they see the money as coming directly from taxpayers' pockets, Cazares said.

"Riverside police have a siege mentality when it comes to Casa Blanca," Cazares commented. "When you have that kind of fear, you will react to reinforce your stereotypes.

"That kind of thought process by rank-and-file police officers proceeds from the top down."

But no one will ever convince Deputy Chief Richardson that he or his officers overreacted in Casa Blanca that night.

Just two weeks after the events of Aug. 1, three officers and four civilians were injured in a violent outburst in the barrio. One officer's eye was shot out and he was permanently retired from the force, Richardson said.

Of the Aug. 1 clash, Richardson concluded, "I felt we used the amount of force appropriate for the offenses under which the arrests were taking place.

"In this case, I believe everybody thinks they are telling the truth. I think the Riveras are honest in how they saw the events of Aug. 1. I also feel the police department is as honest.

"What we are talking about here are perceptual differences. They saw us as an undisciplined, unruly mob. We saw them the same way."

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE MARIANA R. PFAELZER,
JUDGE PRESIDING

SANTOS RIVERA, et al.,)
)
Plaintiffs,)
)
vs.)
)
CITY OF RIVERSIDE,)
)
Defendants.)
)

No. CV 76-1803 MRP

REPORTER'S TRANSCRIPT OF PROCEEDINGS
(Partial)

PLACE: Los Angeles, California
DATE: Tuesday, October 7, 1980

REBECCA RIMSON
Official Reporter
325 U.S. Court House
312 North Spring Street
Los Angeles,
California 90012
(213) 680-1297

APPEARANCES:

For the Plaintiffs:
CAZARES & TOSDAL; By
ROY B. CAZARES
225 Broadway
Suite 1352
San Diego, California 92101

For the Defendants:
KOTLER & KOTLER; By
JONATHAN KOTLER
PATTI ANN KOTLER
8500 Wilshire Boulevard
Suite 903
Beverly Hills, California 90211

LOS ANGELES, CALIFORNIA, TUESDAY, OCTOBER 7, 1980; 2:30 P.M.

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* * * * *

THE COURT: All right. Mr. Flores is going to make a copy of the verdicts for you, both of you, and I will hear anything that you have to say and I will listen to anything you want to say about any further application for relief that you want to make to the Court or any motions that you want to make of any kind.

MR. CAZARES: At this time, your Honor? Well --

THE COURT: You don't have to make the motion now. I am asking you is there anything further that either of you want the Court to do?

MR. CAZARES: Yes, your Honor.

THE COURT: Or any motion you want to make?

MR. CAZARES: On behalf of the plaintiffs and their counsel, we will be making a motion for attorney fees and perhaps a motion for additur.

MR. KOTLER: Your Honor, the only thing I'd like to request to the Court at this time is that if the Court is aware of our scheduling difficulties, to the extent that we have motions, and they are set far enough into November that we could prepare an adequate response to.

THE COURT: Well, you can agree with Mr. Cazares about how we are going to deal with the attorney's fees issue. The only thing I tell you is I'm not going to set it in November. It has to be set in October.

MR. KOTLER: We're not going to be in the country.

THE COURT: You're about to leave, aren't you?

MR. KOTLER: Yes, your Honor.

THE COURT: Then we can set it as soon as -- when are you coming back?

MR. KOTLER: We'll be back around the 1st of November.

THE COURT: Then we can set it a week after you get back.

MR. KOTLER: I had in mind -- it would be on a Monday, would it?

THE COURT: No, it doesn't have to be. It can be any day you wish.

MR. KOTLER: I was going to suggest November 10, which is the first Monday.

THE COURT: Is that all right with you?

MR. CAZARES: Yes.

THE COURT: Now, the burden is on you, as you know. All you have to do is to submit to the Court what your hours are.

MR. CAZARES: Yes.

THE COURT: And what you did.

MR. CAZARES: Yes.

THE COURT: The only thing I advise you is that you know, as well as I do, in the Ninth Circuit you have to give me the hours, the day you worked, and what you did.

MR. CAZARES: Yes, ma'am.

THE COURT: And if there are other people who worked -- for example, Mr. Lopez, Professor Lopez, or any other people who have worked on the case. But you've got to tell them that I cannot grant attorney's fees of any kind or costs unless I have somebody give me a detailed account of what was done.

MR. CAZARES: Yes.

THE COURT: Now, it's obvious that I do not have to have a very detailed account of the days you were in trial, because you were in trial all that length of time, and I can take notice of that. But the preparation for the trial and all the time that you spent in coming here with the Riveras, and so forth, I have to have dates and hours.

MR. CAZARES: We'll prepare a proper motion, you Honor.

THE COURT: Did you come to -- and you also have to be aware of another thing, and that is, since I wasn't the judge on the case originally, you will have to reach back to the period of time when it was in the hands of another judge.

MR. CAZARES: Yes.

THE COURT: Now, the only thing I tell you, Mr. Kotler, is that he is going to get substantial attorney's fees, because this is a lot of time we're talking about.

MR. KOTLER: Yes, your Honor.

THE COURT: My disposition now, so that you would be aware of it, is that I would give Mr. Cazares the attorney's fees that cover everything that he did that's legitimate so that the burden of the attorney's fees does not fall on the parties.

MR. KOTLER: Is your Honor aware that there are other judgments that were issued summarily by Judge Ferguson and still not final as of this time?

THE COURT: I understand that, but I will have to reach back in those files. You will have to give me a legal ground to do it, and then you'll have to give me the time, but if you give me the basis for the time -- I'm doing this more for your benefit, Mr. Kotler, than I am anybody else's, because I want to let you know now how I feel about attorney's fees. It is wrong to ask counsel who worked that hard and then not compensate him if there's a legal ground to do it and he can show me. That's all.

MR. KOTLER: I'm not disagreeing.

THE COURT: And the final thing I say is that I have no quarrel with the quality of what he did. So if I have no quarrel with the quality and he gives me the hours, I will compensate him. And you'll have to tell me the rate.

MR. CAZARES: Yes, your Honor.

THE COURT: All right.

MR. CAZARES: Thank you.

THE COURT: Now, is there anything else?

MR. KOTLER: Have we agreed on the 10th of November?

MR. CAZARES: Yes. That's fine.

THE CLERK: 9:30.

THE COURT: All right. Now, when will you put the papers in and when will you answer? That you will have to agree to.

MR. KOTLER: I can have them served by messenger on Mr. Cazares.

THE COURT: It's up to you.

MR. KOTLER: I would think by the 5th.

THE COURT: Is that all right with you?

MR. CAZARES: That's fine, your Honor.

THE COURT: All right. That's fine.

MR. CAZARES: I don't ask that he serve both counsel.

THE COURT: That's fine.

MR. CAZARES: Thank you very much, your Honor.

THE COURT: All right. Thank you, Mr. Kotler. Thank you, Mr. Cazares.

MR. CAZARES: Thank you, your Honor.

THE COURT: Here are the verdicts. You can take them if you want to and discuss them with your clients if you'd like. Mr. Kotler's clients are not here. And then we'll both make a copy for you.

MR. CAZARES: I'll make sure the copies are made.

MR. KOTLER: Is that going to be done now?

THE COURT: It will be done now.

(Proceedings were concluded.)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE MARIANA R. PFAELZER,
JUDGE PRESIDING

SANTOS RIVERA, et al.,)
)
Plaintiffs,)
)
vs.)
)
CITY OF RIVERSIDE, et al.,)
)
Defendants.)
)

No. CV 76-1803-MRP

CERTIFICATE

I, REBECCA RIMSON, hereby certify that I am a duly appointed, qualified and acting official court reporter for the United States District Court, Central District of California.

I further certify that the foregoing 8 pages comprise a true and correct transcript of the proceedings had in the above-entitled cause on October 7, 1980, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this ___ day of December, 1980.

Official Reporter

UCLA LAW
THE MAGAZINE OF THE UCLA SCHOOL OF LAW
Vol. __ No. 3 SPRING 1980

Washington Lawyering: UCLA Alumni in the Nation's Capitol

The Faculty

Benjamin Aaron has completed a chapter for the labor law volumne of the **International Encyclopedia of Comparative Law** on settlement of labor disputes over rights. He also addressed the Administrative Law Judges Conference on "The Union's Duty of Fair Representation" in February. Professor Aaron is vice chairman and chairman-elect of the statewide Academic Senate and is editor-in-chief of the quarterly journal, **Comparative Labor Law.**

Norman Abrams authored a study, "Administrative Process Alternatives to the Criminal Process," which was published by the National Center for Administrative Justice. His brief paper, "Some Observations on Basic Research on Administrative Procedure and the Idea of a Procedural Continuum" was published in an **Administrative Law Review** symposium.

At a conference on white collar crime at Temple University, he gave a paper on "White Collar Crime and the Federal Role in Law Enforcement," which will be published in the **Temple Law Review.** He also presented a paper on "The Liability of Corporate Officers for the Strict Liability Offenses of their Corporation--A Comment on Dotterweich and

Park" at the Corporate Law Institute in New York.

Professor Abrams, who is teaching a new course on "Federal Criminal Law Enforcement" in which he is using his own casebook materials, is on the steering committee of UCLA's Center for International and Strategic Affairs. This spring he is the center's acting co-director.

Reginald Alleyne recently published an article in **Hastings Law Journal** on the new collective bargaining law for California universities and colleges. Along with Joseph Grodin and Donald Wollett, Professor Alleyne edited a casebook on public sector collective bargaining published by the Bureau of National Affairs.

He addressed a conference of California Administrative Law Judges on arbitration and unfair labor practice remedies and was a seminar leader at a California School Employees Association conference on administrative practices before the California Public Employment Relations Board.

Michael R. Asimow has completed a study for the Administrative Conference of the United States on the separtaion of functions in federal administrative agencies.

He plans to study the functioning of English administrative agencies during his spring semester sabbatical.

John A. Bauman has been appointed executive director of American Law Schools, and will be on a two-year leave from the University to take up his duties in Washington, D.C.

Helen Bendix has completed work on **Supreme Court Practice and Jurisdiction** (with Moore and Ringle) to be published by Matthew Bender Company.

Paul Bergman is a faculty member for the 1980 AALS Clinical Teachers Conference to be held in Montana this June. He has supervised the drafting of new problems for the 1980 experimental portion of the California bar exam to test the practical skills of the examinees. Bergman is also writing an article with the relationship between class action class representatives and attorneys for the class.

David Binder has developed an estate planning curriculum for the American Bar Association's pilot program on law office skills. He was an instructor on that subject for ABA pilot projects in Berkeley and Chicago.

Professor Binder also has published an **Instructor's Manual on Legal Interviewing and Counseling.**

Grace Blumberg has completed an article, "Adult Derivative Benefits in Social Security," to be published by the **Stanford Law Review.** She is currently writing on several aspects of unmarried cohabitation.

Professor Blumberg is serving on the advisory board and litigation subcommittee of the "ERA Impact Project" undertaken by the NOW Legal Defense and Education Fund and the Women's Law Project.

Richard Delgado delivered papers at New York University Law School and the New School for Social Research, and testified before two legislative committees on issues relating to religious movements and the law. His article, "Active Rationality in Judicial Review" appears as the lead article in the **Minnesota Law Review.**

The **New York Review of Law & Social Action** will publish a second article, "Religious Totalism as Slavery" and he has co-authored an article on medical malpractice with second-year law student Joan Vogel. Professor Delgado is now working on an article, "The Moralist As Expert Witness."

George P. Fletcher prepared a 500-page volume of case histories and legal analysis for the UCLA-hosted conference on "Soviet Jews Under Soviet Law," which is now available in law libraries around the country. He spent two weeks in the Soviet Union working on the Shcharansky case and later returned to Moscow on an academic exchange to present a paper on the "Presumption of Innocence in Soviet and America Law" at the Soviet Institute of State and Law. The institute's journal will publish a Russian translation of the paper.

Professor Fletcher also presented a paper on German approaches to the "taking" problem at the USC Conference on Comparative Constitutional Law. He will teach courses on criminal law and legal philosophy as a visiting professor at the University of Frankfurt this spring.

Carole Goldberg-Ambrose is serving as principal investigator of a University grant to produce a series of films on Indian Law.

She recently delivered a report on "Energy Mobilization and the Balance of Federal, State and Tribal Power," and plans to turn that research into several articles.

Donald G. Hagman will teach "Public Control of Land" at the University of Michigan this summer, hoping to use the recently completed second edition of his casebook on that subject.

The southern section of the American Planning Association recently honored Professor Hagman for his outstanding contributions to planning in this area.

William A. Klein has published **Business Organization and Finance: Legal and Economic Prinicples** with Foundation Press this year.

He is also participating in a new course called "Motion Picture Business Transactions," along with instructors Gary O. Concoff and David R. Ginsburg, both of Kaplan, Livingston, Goodwin, Berkowitz & Selvin.

Wesley J. Liebeler recently published a review of Bork's **The Antitrust Paradox** and has completed a manuscript the antitrust activities of the FTC to published by Oxford University Press. He gave papers at the Western Economic Association, the American Economic Association, the Southwestern University Antitrust Symposium, and an antitrust symposiom sponsored by the Law and Economics Center.

Professor Liebeler is working on a paper on the implications of the GTE Sylvania case and a review of current antitrust problems for the Hoover Institute. He is also preparing an article on Friedman vs. Rogers (Texas) for the Law and Economics Center as well as a paper on the 1901 U.S. Steel merger for the Law and Economics Program at the University of Chicago.

Gerald Lopez is nearing completion of his article, "Undocumented Mexican Migration: In Search of a Just Immigration Law," and is researching the development of law surrounding Section 1983.

Professor Lopez was invited to deliver a lecture on "Civil Rights Litigation" at California's first Minority State Bar Convention. He has also been invited to testify before President Carter's Select Commission on Immigration and Refuge Policy.

Daniel Lowenstein is a member of the national governing board of Common

Cause, and an active member of the campaign advisory committee of Californians for Smoking and No-Smoking Sections.

Michael D. Rappaport delivered a paper comparing minority and white placement patterns in the legal profession before the National Conference of . . .

AFFIDAVIT OF JONATHAN KOTLER

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, JONATHAN KOTLER, being first duly sworn, depose and say:

1. I am an attorney at law in good standing with the State Bar of California duly licensed to practice in all of the courts of the State of California, and am attorney for the Defendants herein and by virtue of the foregoing, I have personal knowledge of and am competent to testify to and if called to testify would so testify to the following:

2. I have read both the Affidavit of Gerald P. Lopez and that of Roy B. Cazares re: request for attorneys fees, and since the legal arguments in opposition to their motion are contained in

the Memorandum of Points and Authorities filed concurrently herewith, I will confine this affidavit to the subject matter of their affidavits.

3. Directing this Honorable Court's attention to paragraph 7 at page 4 of Mr. Lopez' affidavit, wherein Mr. Lopez refers in two separate places to the "litigious nature of defendants", your Affiant finds it hard to understand how defendants can ever be litigious. If, as Mr. Lopez seems to indicate, he is referring to objections to discovery and witnesses, then your Affiant is content to rest on the record of this case wherein Mr. Lopez and his clients were precluded by court order from discovery which your Affiant, as attorney for Defendants herein objected to, and they eventually withdrew a myriad of

exhibits and witnesses to which, likewise, your Affiant objected. Apparently, Mr. Lopez is taking the position that your Affiant has been litigious for doing those very things, which, if your Affiant hadn't done, your Affiant could be sued for malpractice by his very own clients.

4. In the same paragraph, Mr. Lopez states:

> "Finally, and perhaps the best evidence of the litigious nature of defendants, the number of hours expended is great because defendants never once made a reasonable settlement offer."

5. To that dubious charge, your Affiant states that he is unaware of rule of law which would require him to respond to unreasonable settlement offers, the last one of which was for an

amount nearly ten time the award eventually made by the jury herein. Further, what Mr. Lopez does not state (and perhaps, because he has not checked with Mr. Cazares) is that the last settlement offer made by your Affiant to the Plaintiffs herein, through Mr. Cazares, was for the sum of $25,000.00. This amount was only eight thousand dollars away from the amount the jury eventually awarded, but it was rejected by Mr. Cazares who, apparently, anticipating a very large jury award herein, told your Affiant that he would be seeking attorneys fees in the sum of $70,000.00 for Mr. Lopez and himself.

6. The aforesaid offer of $25,000.00 was made prior to the jury coming back with its award herein, and

while they were deliberating. Subsequent to the jury's findings herein, the attorneys for the Plaintiffs herein immediately forgot not only that the settlement offer was made, but have increased their demand for attorneys fees more than six-fold, although no other services were rendered by them (according to their own affidavits) between the time this offer was made and their demand for attorneys fees herein was filed, other than asking for fees for themselves.

7. As to the affidavit of Mr. Roy B. Cazares filed in an effort to get from this Honorable Court what the jury refused to give his clients, attention is drawn to paragraph 2 of said affidavit wherein Mr. Cazares apparently is under the belief that "counsel for

defendants knew or should have known that expenses alone totaled nearly $7,000.00" and on that basis should have increased the settlement offer made by your Affiant's clients.

8. What your Affiant cannot understand and cannot reconcile, is how your Affiant should have known that Mr. Cazres' expenses "alone totaled nearly $7,000.00" when his very own affidavit filed in conjunction with his request for attorneys fees (Exhibit "C" to the Motion) shows expenses of $4,038.51. Is this three thousand dollar difference merely an oversight on Mr. Cazares' part? Put another way, how can Mr. Cazares really expect that our Affiant "knew or should have known that expenses alone totaled nearly $7,000.00" when his

own belief and evidence is to the contrary?

9. And finally, as stated in your Affiant's own Motion for Attorneys Fees filed previously in this matter, and to also be heard on January 19, 1981, your Affiant, who has a great deal more litigation experience than either of the opposing counsel in this matter, having been a trial lawyer, and having been involved in federal court litigation since 1971 (or nearly twice as long as either Mr. Lopez or Mr. Cazares) has throughout this entire action charged his clients the sum of $50.00 per hour. The results herein show that at the sum of $50.00 per hour your Affiant obtained approximately 10 times as many judgments for his clients as counsel for the Plaintiffs herein did for theirs, and

yet they are seeking attorneys fees based on an hourly rate of up to $300.00 per hour.

10. Executed at Beverly Hills, California, this 5th day of January, 1981.

/ss/Jonathan Kotler
JONATHAN KOTLER

Subscribed and sworn
to before me, this
5th day of January,
1981.

/ss/Roger Franklin
NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE
My Commission Exp. Apr. 27, 1983

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

I, the undersigned, say: I am and was at all times herein mentioned a citizen of the United States, over the age of 18, herein employed in the County of Los Angeles and not a party to the above entitled action; that my business adress is 8500 Wilshire Blvd. Suite 903, Beverly Hills, California 90211.

That on January 5, 1981, at the direction of Jonathan Kotler, a member of the Bar of the State and Federal Courts of the within district, I served the within DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF JONATHAN KOTLER IN SUPPORT THEREOF on the Attorneys for Plaintiffs in said action or proceedings by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Beverly Hills, California, addressed to Attorneys of Record for said Plaintiffs as follows:

Roy B. Cazares
Cazares & Tosdal
225 Broadway, Suite 1352
San Diego, CA 92101

Jerry Lopez
c/o UCLA School of Law
405 Hilgard Ave.
Los Angeles, CA 90024

Executed on January 5, 1981, at Beverly Hills, California.

I declare under penalty of perjury that the foregoing is true and correct.

/ss/Maggie Miller
Maggie Miller

APPENDIX 7

CAZARES & TOSDAL
Attorneys at Law
225 Broadway, Suite 1352
San Diego, Ca 92101
Telephone: (714) 233-6581
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al.,)
)
Plaintiffs,)
)
vs.)
)
CITY OF RIVERSIDE, et al.,)
)
Defendant.)
)

NO. CV 76-1803-MRP

AFFIDAVIT OF ROBERT L. WINSLOW IN SUPPORT OF PLAINTIFFS' MOTION FOR REASONABLE ATTORNEYS FEES AND COSTS

ROBERT L. WINSLOW, first being duly sworn, deposes and says:

1. I am a partner and the co-chairman of the litigation department in the

law firm of Irell & Manella. I am a 1949 graduate of Stanford Law School where I served on the Board of Editors of the Stanford Law Review. I was admitted to the California Bar in June 1949 and immediately began practice as a Deputy District Attorney in Mendocino County, California. In March of 1950, I left the District Attorney's office to become an individual and sole practitioner in Mendocino County. I operated my own law office until April 1961 when I was appointed to the Superior Court in Mendocino County. I served as a Superior Court Judge until January of 1969 when I joined the firm of Mitchell, Silberberg & Knupp in Los Angeles. I remained with that firm until September of 1972 when I joined the firm of Irell & Manella.

2. During the first ten years of my practice, I was a general practitioner operating a typical small office general practice, including of course a wide range of litigation. During the next eight years of my professional life, I had the enriching experience of serving as a Superior Court Judge where, as a trial judge, I presided over a wide variety of trials, including commercial, domestic, criminal, personal injury and eminent domain trials. I tried several homicide cases as well as cases of minor significance. I also served on the faculty of a number of Judicial Council sponsored institutes and the faculty of the California College of Trial Judges. While at Mitchell, Silberberg & Knupp and in my current position at Irell &

Manella I have been involved primarily in complex commercial litigation.

3. Recently, in a major consumer class action where I was chief counsel representing the plaintiff class, **Garrett v. Coast Federal Savings and Loan Association**, Los Angeles Superior Court No. C995634, I was involved in preparing and presenting to the Court an application for attorneys' fees in that action for the successful plaintiffs' counsel. In connection with that action, and generally as a partner in a large commercial law firm, I have become familiar with the general criteria for fixing attorneys' fees and with the range of attorneys' billing rates charged by attorneys in Los Angeles County. Those billing rates range from $50 an hour to

$250, depending upon the age, skill and experience of the particular attorney.

4. I have been informed that Gerald P. Lopez was graduated from Harvard Law School approximately seven years ago, that for over five years he has specialized in civil rights litigation, that he teaches a course on civil rights legislation (focusing on §1983) at the School of Law at the University of California at Los Angeles, and that he researches and writes in the field of civil rights. It is my opinion that $125 per hour is a reasonable hourly billing rate for a person of Mr. Lopez' background and experience.

5. I have been informed that Roy B. Cazares was graduated from Harvard Law School over seven years ago, that for

seven years he has specialized in litigation, with the last five years devoted primarily to civil rights litigation, and that he has lectured on civil rights, constitutional law and police-community relations. It is my opinion that $125 per hour is a reasonable hourly billing rate for a person of Mr. Cazares' background and experience.

6. By hourly billing rate I have been referring to the billing rates at which time is recorded by a law firm as work is being performed on a matter. This hourly billing rate only provides a guideline for a determination of a reasonable and proper fee in a given matter. The reasonableness of a fee also depends upon the complexity of the issues involved in the matter, the experience in the particular field of

the attorneys involved, the result achieved, the risk of an unfavorable result, whether the case was taken on a contingency basis and the vigor with which the case was litigated by both sides. These factors, in an appropriate case, might support a reasonable attorney's fee significantly in excess of the reasonable hourly billing rate multiplied by the number of hours worked on a case.

7. The information contained herein is of my own personal knowledge, except as otherwise specified herein, and if called as a witness in this matter I would be competent to testify to all of the above.

Dated: December 18, 1980

/ss/ Robert W. Winslow
ROBERT W. WINSLOW

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

SUBSCRIBED AND SWORN TO before me this 18th day of December, 1980.

/ss/ MARCIA A. LEVIN
Notary Public
My Commission expires June 21, 1982

APPENDIX 8

CAZARES & TOSDAL
Attorneys at Law
225 Broadway, Suite 1352
San Diego, Ca 92101
Telephone: (714) 233-6581
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al.,

Plaintiffs,

vs.

CITY OF RIVERSIDE, et al.,

Defendants.

NO. CV 76-1803-MRP

SUPPLEMENTAL AFFIDAVIT OF GERALD P. LOPEZ IN SUPPORT OF PLAINTIFFS' MOTION FOR REASONABLE ATTORNEYS FEES AND COSTS

GERALD P. LOPEZ, being duly sworn, deposes and says:

1. I am co-counsel for the plaintiffs in the above-captioned action; I

make this affidavit in order to bring to the Court's attention facts relevant to the amount of fees requested in the previously submitted Motion For Reasonable Attorneys Fees and Costs.

2. In my affidavit of December 1, 1980, I stated that as of that time, I had expended 1,265.50 hours on the prosecution of this case. Those hours were expended on the following days and activities:

8/25/75	Conference with Roy B. Cazares (Cazares) re results of trip to Riverside, potential causes of action	2.00
8/28/75	Review internal memo re initial investigation and preliminary research	2.50
9/3/75	Research absolute municipal immunity under Federal Civil Rights Act	3.50

9/11/75	Research individual liability	2.50
9/16/75	Research individual and municipal liability	3.50
9/22/75	Conference with Cazares re: Preliminary research	2.50
9/26/75	Prepare draft of retainer agreement	2.00
9/30/75	Meet with Cazares re Theories of liability and what persons to represent	1.50
10/3/75	Meet with clients to discuss strategy and explain specifics of retainer agreement	2.50
10/9/75	Draft letter with retainer agreement and proposed steps	2.50
10/11/75	Telephone call with J. Rivera	.50
10/20/75	Review letters from Jennie Rivera; note to file	.50
10/23/75	Research and prepare admin. complaints; meet with Cazares re same	3.50

10/23/75	Meet with J. Rivera and M. Flores re progress and new witnesses	2.00
10/29/75	Trip to Riverside to file administrative complaints, investigate, interview witnesses	8.50
10/31/75	Draft letter and claim against city to Larrabees	1.50
11/3/75	Draft letter to Larrabee re retainer	1.00
11/5/75	Research availability of Federal Equitable Relief preventing unconstitutional prosecution of various of our clients	3.50
11/7/75	Research availability of Federal Equitable Relief preventing unconstitutional prosecution of various of our clients	2.00
11/11/75	Research the Res Judicata effects of prior state criminal proceedings on subsequent Federal Civil Rights Claims	4.50

11/15/75	Research the Res Judicata effects of prior state criminal proceedings on subsequent Federal Civil Rights Claims	3.50
11/20/75	Conference with Cazares re findings of research	1.50
11/21/75	Meeting with clients	3.50
11/24/75	Research effect of stipulation of probable cause accompanying dismissal of criminal prosecution	2.50
11/25/75	Conference with Cazares re stipulation of probable cause and effect	1.00
11/28/75	Review letter from J. Rivera: notes to file	.50
12/15/75	Draft receipt for 8 photographs requested by Barbara Beck, Riverside P.D.	1.00
12/15/75	Conversation with Cazares and clients re Riverside's rejection of client's claims	1.50
12/16/75	Review letter from R.S. Paz and telephone call to same	1.00

12/24/75	Review City of Riverside's rejection of clients' claims forwarded by clients with cover letter	.50
1/7/76	Research 1983 case law for claims against individuals	3.50
1/13/76	Research Joint and Several liability under 1983	3.00
1/14/76	Research rationale and justification for John Doe practice in Ninth Circuit; alternatives in identifying unknown police officers	3.50
1/14/76	Conference with Cazares re John Does	1.00
1/17/76	Research choice of law of provisions 42 U.S.C. § 1988 and relevant cases	4.00
1/28/76	Meet with Cazares re Insurance Co. request for indemnity and note to file	.50
1/28/76	Conversation with H. J. Fuller re Rivera insurance claim	.50

1/28/76	Research § 1981 and its potential application to individual defendants and City	4.00
2/2/76	Review letter and information received from Jennie Rivera	.50
2/5/76	Research §§ 1985 and 1986 application to facts particularly unknown officer failing to prevent unlawful acts of others	3.00
2/7/76	Research §§ 1985 and 1986 application to facts particularly unknown officer failing to prevent unlawful acts of others	3.50
2/12/76	Research Prima Facie case of **Bivens**-like claim against City	2.50
2/18/76	Meet with Cazares re **Bivens**-like claim	1.50
2/20/76	Further work on **Bivens** claim against City	2.00
3/5/76	Research state causes of action: False Arrest, Malicious Prosecution, Negligence	3.50

3/9/76	Research state causes of action. False Arrest, Malicious Prosecution, Negligence particularly negligence in training and supervision	2.50
3/13/76	Research likelihood of federal court abstention in view of pendent claims	3.00
3/18/76	Review personal injury literature for analogues to "Constitutional Torts": necessary proof, amounts of recovery, etc.	2.50
3/19/76	Research case law re damages: proof necessary for various constitutional rights asserted	3.50
3/19/76	Conference with Cazares re pendent state claims and proof of damage	2.00
3/22/76	Letters to clients requesting additional specific information and suggesting plan of procedure at end of criminal trial	2.50
3/29/76	Conference with Cazares and Napoleon	

	Jones re proof of psychological injury	1.50
3/31/76	Conversation with Psychologist Audrey Weiss	2.00
4/1/76	Letter to Riveras re appointments with Audrey Weiss; research re proof of emotional anxiety with respect to constitutional claims of due process First Amendment Rights	2.00
4/9/76	Appointment with Jerome Rivera	2.50
4/12/76	Review letter from Jennie Rivera re chain of custody; research state statutory and common law immunities to various potential claim: any effect on federal claims?	5.00
4/15/76	Further research of state statutory and common law immunities and defenses	3.50
4/19/76	Telephone conversation with and letter to Riveras re appointment for Donald with Weiss	1.00

4/24/76	Research obstacles to systemic relief; hiring, training and supervision, community contact, administrative claims procedure, internal police misconduct procedures and related matters	7.50
4/28/76	Meet with Roy to discuss theories of case	2.50
4/29/76	Letter to court requesting subpoenas	.50
5/5/76	Letter to H.J. Fuller re insurance; notes to file	.50
5/15/76	Draft complaint	4.50
5/18/76	Meet with Larrabees re case	2.00
5/21/76	Telephone call to Sam Paz re other witnesses and nature of our complaint	.50
6/7/76	Letter to District Court re: filing fee	.25
6/11/76	Letter to insurance agent for Riveras	.25
6/14/76	Letter to clients; review additional witness statements	2.00

6/16/76	Meet with Cazares re discovery plan: interrogatories and depositions	1.00
6/21/76	Letter to process server	.25
6/23/76	Letter to counsel (representing other plaintiffs) re discovery	.50
6/23/76	Letter to U.S. District Court on proof of service	.50
7/2/76	Review answer to complaint	2.50
7/6/76	Receive and review Notice of Pre-Trial Conference; research various technical procedural issues	1.50
7/7/76	Telephone conversation with J. Ferguson's Clerk re Change of Caption	.50
7/9/76	Stipulate re change of caption sent to opposing counsel, James Mead	2.50
7/15/76	Receive and review complaint #76-1901-R to be low-numbered to J. Ferguson	1.50

7/16/76	Letter to J. Ferguson re stipulation	.50
7/22/76	Research history (compiled by Riverside citizen) of police-community relations in Riverside for possible use re: pattern and practice, acquiescence with knowledge, racial animas, etc.	3.50
7/27/76	Reserach history (compiled by Riverside citizen) of police-community relations in Riverside for possible use re: pattern and practice, acquiescence with knowledge, racial animas, etc,: review	2.50
8/2/76	Further research of significant police-community contact in or near Casablanca	3.00
8/10/76	Research proof necessary for systemic relief: restructuring dept., Admin. Claims Procedures; Review **Rizzo**-libel cases	3.50
8/12/76	Research proof necessary for systemic relief: restructuting dept., Admin. claims	

	procedures; Review **Rizzo**-libel cases	2.00
8/18/76	Further research newspaper account of police-Casablanca contact	3.00
8/24/76	Conference with Cazares re discovery with respect to police-community relations	1.50
8/27/76	Research newspaper accounts: police Casablanca contact	1.50
9/1/76	Contact local San Diego police officers as "experts" re police handling of riots; police-community relations, etc.	2.00
9/7/76	Investigate relationship of Riverside County D.A. and City of Riverside: Due Process Issues	2.00
9/15/76	Review cross-exam notes of criminal defense counsel	3.00
9/17/76	Call J. Ferguson's Clerk to continue noticed pretrial conference	.25

9/20/76	Research statutory and common law view of police reports: purpose? obligation of individual police officer? personal observation alone? group effort?	2.50
9/27/76	Research statutory and common law view of police reports: purpose? obligation of individual police officer? personal observation alone? group effort?	2.00
10/4/76	Prepare for discovery with counsel for other group of plaintiffs	2.50
10/8/76	Prepare for discovery with counsel for other group of plaintiffs	1.50
10/15/76	Prepare "proof charts" and review notes on history; identification at scene; corroborating witnesses for meeting with other counsel	2.50
10/15/76	Confer with Cazares re scheduling of discovery, other matters	1.50
10/17/76	Meeting with Cazares and Paz	2.50

10/25/76	Confer with San Diego with insurance counsel re: typical settlement figures for alleged constitutional injury	1.50
10/29/76	Review jury verdict awards	1.50
11/3/76	Review witness statements compiled immediately after the incident; read jury awards	2.50
11/11/76	Review case law for evidence admissible in making out damages for constitutional deprivation	3.50
11/12/76	Review case law for evidence admissible in making out damages for constitutional deprivation	3.00
11/16/76	Prepare inter office notes re notice of deposition	2.00
11/29/76	Further work for depositions	1.50
11/29/76	Letters to Riveras re depositions	1.00
12/9/76	Further work in preparation for deposition	2.00

12/10/76	Further work in preparation for deposition	2.50
12/14/76	Meet with Cazares re: my work in preparation for deposition	1.50
12/15/76	Review information relevant to deposition of individual defendants: prepare notes for Cazares	3.00
12/16/76	Review information relevant to deposition of individual defendants: prepare notes for Cazares	2.50
12/17/76	Review information relevant to deposition of individual defendants; prepare notes for Cazares	3.00
12/21/76	Review information relevant to deposition of individual defendants: prepare notes for Cazares	4.00
12/22/76	Review information relevant to deposition of individual defendants: prepare notes for Cazares	3.00
1/5/77	Preparation of first set of interrogatories	

	to be propounded to defendants	6.00
1/6/77	Meet with Cazares re upcoming depositions	2.00
1/10/77	Read and research defendant City of Riverside's 23 page motion to dismiss	4.00
1/13/77	Meet with Cazares re depositions; prepare notes re witnesses for future reference	2.00
1/15/77	Research response to City of Riverside's motion to dismiss	.50
1/18/77	Review and sign stipulation to continue pre-trial conference	.25
1/25/77	Write draft of opposition to City's motion to dismiss	3.50
1/26/77	Review draft of opposition	3.50
1/28/77	Proof read opposition, final check of citations, draft letter to court for filing	3.00
1/30/77	Read correspondence from Kotler re depositions and pretrial conference	.50

1/31/77	Read defendants' interrogatories propounded to plaintiffs	1.00
2/2/77	Draft letter to clients re depositions and interrogatories	.50
2/4/77	Read and research defendant City's supplemental memorandum in support of motion to dismiss: re **Aldinger v. Howard**	2.50
2/4/77	Read second separate (45 page) motion to dismiss filed by various individual defendants	3.00
2/5/77	Work in preparation of plaintiffs' response to defendants' interrogatories	6.00
2/8/77	Research case law cited by individual defendants in support of their separate motion to dismiss	6.50
2/10/77	Research case law cited in support of individual defendants separate motion to dismiss	3.50
2/14/77	Research individual defendants motion to	

	dismiss: Our argument re elements of prima facie §1983 claim	3.50
2/15/77	Work in preparation of plaintiffs' response to defendants' interrogatories	3.00
2/15/77	Confer with Cazares re plaintiffs' response to defendants' interrogatories	1.50
2/22/77	Read letter from Sam Paz	.25
2/23/77	Research availability of state statutory immunities raised by individual defendants in their motion to dismiss as complete bar to 1983, etc., claims	4.00
2/24/77	Draft letter to Samuel Paz re continuing defendants' motion to dismiss	.25
3/3/77	Draft points and authorities in opposition to individual defendants' motion to dismiss	4.00

3/8/77	Further preparation of first set of interrogatories to be propounded to defendants	3.00
3/10/77	Work in preparation of plaintiffs response to defendants' interrogatories	7.00
3/14/77	Preparation and argument re motion to dismiss	6.50
3/15/77	Read and research defendant City's 18 page reply to points and authorities in opposition to defendant City's motion to dismiss: Bivens analogue applied to City	3.00
3/16/77	Research City's reply to our opposing points and authorities	2.50
3/18/77	Draft letter to Sue Reeves, reporter, re corrections of depositions	.25
3/24/77	Read and research individual defendants reply to points and authorities in opposition to individual defendants' motion to dismiss	2.50

3/25/77	Draft argument in response to individual defendants reply to points and authorities in opposition to individual defendants' motion to dismiss	3.00
3/27/77	Prepare for argument on motion of City of Riverside	3.50
3/28/77	Preparation and argument re motion of City of Riverside to dismiss; post-argument notes and notes re discovery strategy	8.00
3/29/77	Read Kotler's letter re our response to interrogatories propounded 1/28/77. Review interrogatories in question	2.50
3/31/77	Prepare order and accompanying letter denying each and every motion to dismiss brought by defendant City and individual defendants	1.00
4/1/77	Final work on plaintiffs interrogatories to defendants	3.50
4/1/77	Draft motion to produce for inspection	

	and copying of documents	1.00
4/6/77	Draft letter to court re filing of interrogatories and motion to produce for inspection	.75
4/6/77	Draft letter to Ron & Mark Larrabee re interrogatories	.25
4/7/77	Review defendants second set of (414) interrogatories to each and every plaintiff (received 4/5/77)	3.00
4/11/77	Work on plaintiffs' response to defendants' second set of interrogatories	3.50
4/14/77	Review defendants 35 page motion to require further answers to first set of interogatories	3.00
4/15/77	Further work on plaintiff's responses to defendants' second set of interrogatories	6.75
4/18/77	Conference with Cazares re defendants' discovery tactics and oppressive interrogatories	.50

4/18/77	Work on motion for a protective order	2.50
4/21/77	Draft letter to court clerk re Larrabee interrogatories	.25
4/22/77	Prepare application for a protective order	2.00
4/25/77	Prepare application for protective order	2.50
5/5/77	Draft plaintiffs' memo of points and authorities in opposition to defendants' motion to compel	3.50
5/6/77	Review defendants response in opposition to plaintiffs' motion to produce for inspection and copying	.50
5/9/77	Read Kotler's letter re conference	.25
5/11/77	Review defendants' points and authorities in opposition to plaintiffs' motion for a protective order	1.50
5/16/77	Preparation for and hearing re motion to require further answers and motion for protective order;	

	review stipulation and order re discovery	5.00
5/24/77	Work on plaintiffs' response to defendants' second set of (414 x 8) interrogatories	3.00
5/25/77	Review Kotler's letter re date for defendants' to respond to interrogatories	.25
6/2/77	Draft letter to Larrabee preparing Mark for deposition	1.50
6/3/77	Draft letter to Kotler in response to letter of 5/23/77 re discovery	.75
6/9/77	Review Kotler letter dated June 8 re agreement on discovery	.25
6/17/77	Preparation for, travel and deposition of Mark Larrabee in Los Angeles	7.00
6/19/77	Work on motion to require further answers and to compel production of documents: deliberately ignored discovery stated and asserted such objections as	

	"heresay and inadmissibility of evidence; objected to terminology as "unintelligible" when the term ("*neighborhood problem*") was employed by defendants *not* plaintiffs; deliberately avoiding subparts to questions; asserting attorney-client privilege without even attempting to demonstrate that privilege exists and applies; refuse production of documents through blanket assertions of irrelevance and work-product rule	7.50
6/21/77	Work on motion to require further answers and to compel production of documents: etc. (see 6/19/77)	5.50
6/23/77	Work on motion to require further answers and to compel production of documents: etc. (see 6/19/77)	4.50
6/28/77	Telephone conversation with Kristin Belko re Two week extension on	

	discovery for both sides	.25
6/30/77	Review Belko's follow up letter	.25
6/30/77	Continue work on plaintiffs' response to defendants' second set of interrogs.	5.50
7/1/77	Continue work on plaintiff's response to defendants' (414 x 8) second set of interrogatories	4.50
7/2/77	Continue work on plaintiffs' response to defendants' (414 x 8) second set of interrogatories	3.00
7/3/77	Continue work on plaintiffs' response to defendants' (414 x 8) second set of interrogatories	6.00
7/5/77	Continue work on plaintiffs' response to defendants' (414 x 8) second set of interrogatories	4.00
7/6/77	Continue work on plaintiffs' response to defendants' (414 x 8) second set of interrogatories	3.50

7/12/77	Draft letter to Larabee's re deposition	.25
7/21/77	Draft letter to Larrabees on response to second set of interrogatories propounded by defendants	.25
7/21/77	Draft letter to L. Rivera	.25
7/21/77	Review defendants 58 page memo of points and authorities in opposition to plaintiffs' motion to compel	4.50
7/25/77	Review defendant City of Riverside's response to plaintiffs' interrogatories	2.50
7/27/77	Research objections (unsupported) interposed by City to plaintiffs' interrogs.	3.50
7/28/77	Research various positions asserted (but unexplained and unsupported) by defendants in their 58 page memo in opposition to plaintiffs' motion to compel	5.00

8/3/77	Draft letter to U.S. District Court re: verifications	.25
8/3/77	Research motion to require further answer of City to plaintiffs' interrogatories	4.50
8/5/77	Review defendants' motion for summary judgment, 23 affidavits	2.00
8/6/77	Draft motion to require further answers of City of Riverside. To be heard 9/12/77	3.00
8/8/77	Further research individual defendants' positions in opposition to plaintiffs' motion to compel	3.50
8/10/77	Letter to J. Rivera re: updated witness list	.25
8/11/77	Research defendants' motion for summary judgement	4.50
8/16/77	Conversation with Kotler re plaintiffs' answer to interrogatories and other discovery	.25

8/18/77	Work on opposition to defendant's motion for summary judgment	3.00
8/19/77	Confer with Cazares re opposition to summary judgment	1.00
8/25/77	Research and draft reply memorandum in support of motion to compel	2.50
8/26/77	Research and draft reply memorandum in support of motion to compel	3.00
8/29/77	Draft letter to H.J. Fuller re insurance claim	.25
8/31/77	Draft letter to court	.25
8/31/77	Work on opposition to defendants' motion for summary judgment	2.00
9/2/77	Work on stipulation regarding issues remaining to be determined re plaintiffs' motion to compel	4.00
9/6/77	Draft letter accompanying stipulation re issues re motion to compel discovery	.25

9/6/77	Draft opposition to defendants' motion for summary judgment and statement of genuine issues	4.00
9/7/77	Draft statement of genuine issues in compliance with local rules	3.00
9/12/77	Preparation for and oral argument re motion to compel and review defendants' response to plaintiffs' reply memo; further work (post hearing) in discovery and opposition to summary judgment and things to be done	8.00
9/18/77	Research and draft supplemental points and authorities in opposition to defendants' motion for summary judgment	2.00
9/22/7	Review City's opposition to plaintiffs' motion to compel further answers	2.00
9/23/77	Draft letter to Kotler re authorizations of J. Rivera and L. Rivera	.25

9/23/77	Review defendants' reply to points and authorities in opposition to motion for summary judgment	2.00
9/25/77	Research City's opposition to plaintiffs' motion to compel	3.50
9/25/77	Research City's opposition to plaintiffs' motion to compel	3.50
9/25/77	Prepare for hearing-research City's new opposition	2.00
9/26/77	Hearing (preparation and argument) re motions	7.00
9/27/77	Draft affidavits for second opposition to defendants' additional affidavits	4.50
9/28/77	Further work on affidavits; research further points and authorities and draft further opposing points and authorities	7.00
9/29/77	Confer with Cazares re all outstanding motions	3.00

9/30/77	Draft letter to Larrabee re Mark's affidavit	.25
9/30/77	Review supplemental affidavits in support of summary judgment	.50
9/30/77	Final work on stipulation re 7 issues remaining to be determined with regard to plaintiffs' motion to compel production of documents	2.00
10/3/77	Research and draft stipulation re issues with regard to plaintiffs' motion to compel further answers to defendant City of Riverside	6.00
10/5/77	Review letter and stipulation from Kotler	.25
10/5/77	Review letter from notary in Riverside	.25
10/13/77	Review defendants' response to plaintiffs' points and authorities in response to defendants' second set of affidavits	2.50

10/14/77	Research for summary judgment argument	3.00
10/14/77	Review all discovery and all affidavits re motion for summary judgment	7.00
10/15/77	Preparation for oral argument	3.50
10/16/77	Preparation for oral argument on 10/17	4.00
10/17/77	Preparation for and argument re plaintiffs' motion to compel further answers of City and defendants' motions for summary judgment; further work post argument re additional discovery and strategy	8.00
11/7/77	Review defendants' motion to compel further answers to defendants' second set of interrogatories	2.50
11/15/77	Review affidavit submitted by defendants' in response to motion to require futher answer; research claim by defendants	2.50
11/14/77	Draft final stipulation re motion to	

	require further answer of City pursuant to oral agreement in court on 10/17/77	2.50
11/17/77	Draft letter to court with accompanying stipulation re motion to compel further answer of City	2.00
11/17/77	Review defendants' motion to compel further answer to defendants' second set of interrogatories	2.00
11/30/77	Read letter from Kotler re authorizations	.25
12/2/77	Read letter from Kotler re stipulation	.25
12/8/77	Draft letter to Kotler and Belko re meeting re stipulation	.25
12/8/77	Draft plaintiffs' opposition to defendants' motion to compel further answers to defendants' second set of interrogatories	4.50
12/19/77	Preparation for and work on stipulation re issues remaining to be determined with respect to defendant's	

	motion to compel further answers to defendants' second set of interrogatories	3.00
1/9/78	Preparation for an argument in hearing re defendants motion to compel; work on further discovery	7.00
1/24/78	Draft letter to Kotler re documents requested in motion to produce	.25
1/24/78	Review taxing of costs filed by Kotler; call court clerk; research challenge	3.50
1/25/78	Research motion pursuant to rule 54(d) Fed. R. Civ. P.	3.00
1/26/78	Research recently decided cases; conference with Cazares	5.00
1/30/78	Research legislative history	6.00
1/31/78	Draft motion	2.50
2/3/78	Interview witnesses in Riverside	10.00
2/6/78	Draft letter to J. Rivera re witnesses and newspaper clippings	.25

2/7/78	Review letter for Kotler re taxing of costs	.25
2/9/78	Confer with Cazares re possible expert testimony	1.00
2/9/78	Draft letter to Professor Mirande as expert witness	.50
2/13/78	Review court's order re plaintiffs motion to compel; research courts view of **Rizzo**	3.50
2/27/78	Confer with Cazares re upcoming depositions	1.00
3/1/78	Review defendants' response to motion objecting to the imposition and taxing of costs	1.00
3/5/78	Prepare for argument	2.50
3/6/78	Preparation for argument re plaintiffs' motion re taxing of costs - granted; further work on discovery	7.00
3/9/78	Preparation of order and accompanying letter to court	1.00
3/10/78	Work on plaintiffs' response to defendants	

	second set of interrogatories (as amended by court)	3.50
3/21/78	Research: police-community relations: prototype vis a vis Riverside re proof and injunctive relief	3.50
3/22/78	Research: police-community relations: prototype vis a vis Riverside re proof and injunctive relief	4.00
3/27/78	Letters to J. Rivera, et al., re plaintiffs' response	.50
4/4/78	Review defendant City's further answers to interrogatories	.50
4/7/78	Review Plaitt, Smith, Eltringham, Olsen, Brading, et al., further answers to interrogatories; compare with existing information for accuracy	3.50
4/8/78	Prepare notes for deposition and further discovery of various individual defendants	6.00
4/19/78	Confer with Cazares re Pattern and Practice of City of Riverside	1.00

4/10/78	Draft further interrogatories to defendant City, Research Rizzo-like discovery	4.50
5/2/78	Draft letter to Kotler re inadequacy of individual defendants responses to interrogatories	3.00
5/3/78	Served with Civil Complaint for malicious prosecution filed by Kotler on behalf of dismissed defendants naming clients and ourselves as defendants; research and conference with Cazares	3.50
5/4/78	Letter to Kotler re missing items ordered by Court	.50
5/5/78	Telephone conference with Kotler re 5/2/ information	.50
5/5/78	Draft follow-up letter to Kotler	.25
5/5/78	Research federal removal provisions	3.50
5/6/78	Review court ordered further answers and reports	5.00

5/8/78	Read Kotler's letter re telephone conference	.25
5/8/78	Research federal removal provisions; relevant case law	4.50
5/13/78	Research removal provisions, relevant case law	5.00
5/15/78	Conference with Cazares re removal and motion to dismiss and motion for summary judgment	2.00
5/16/78	Draft removal petition and affidavits; prepare bond	3.00
5/18/78	Review Kotler's letter re possible stipulation	.25
5/19/78	Research Motion to Dismiss/motion for summary judgment of removal successful	7.00
5/23/78	Draft motion to dismiss/motion re summary judgment and affidavit	4.50
5/23/78	Discuss removal with clients	1.50
5/24/78	Discuss removal with clients	1.50

5/25/78	Final work on motion to dismiss/motion for summary judgment	3.00
5/31/78	Discuss motions with clients	2.50
5/31/78	Review Kotler letter "Line Memos" of individual defendants	1.00
6/6/78	Review motion to remand; research	1.50
6/7/78	Research and draft points and authorities in opposition to motion to remand	3.50
6/13/78	Draft letter to court accompanying opposition to motion to remand	.25
6/16/78	Review response to motion for summary judgment; research case law cited; review affidavits, filed	4.50
6/17/78	Review response to motion for summary judgment; research case law cited; review affidavits; compare with affidavits filed in support of motion	6.00
6/23/78	Review defendants' response to opposition	

	to defendants motion to remand; note defendants' use of **Sweeney**	1.00
7/10/78	Review individual defendants' supplemental answers to interrogatories and City's supplemental further answer	3.00
7/11/78	Review individual defendants' supplemental answers to interrogatories and City's supplemental further answers and prepare questions and items of additional discovery	4.50
7/14/78	Read and study defendant City's answers to second set of interrogatories	2.50
7/15/78	Read and study defendant City's answers to second set of interrogatories	3.50
8/8/78	Review individual defendants' answers to second set of interrogatories; notes for further discovery	5.00
8/9/78	Review individual defendants' answers to second set of interrogatories; notes for further discovery	4.50

8/9/78	Draft request for production of documents and motion to compel further answer of Chief Ferguson and City of Riverside	2.75
8/10/78	Confer with Cazares re further discovery: review discovery to date, further needs, etc.	2.00
8/16/78	Review Kotler's letter re supplemental answers of defendant City	.25
8/16/78	Review: compare & contrast all defendants' responses re: unfolding events with respect to probable cause and other relevant facts	6.50
8/17/78	Review: compare and contrast all defendants' responses re: unfolding events with respect to probable cause and other relevant facts	5.00
8/18/78	Review: compare and contrast all defendants' responses re: unfolding events with respect to probable cause and other relevant facts	3.00

8/19/78	Prepare for motion to remand/motion for summary judgment hearing	5.00
8/20/78	Prepare for hearing; review notes and case law	4.50
8/21/78	Preparation and argument, prepare order	4.00
8/22/78	Review all documents relevant to Olsen deposition; notes for Cazares	3.00
8/28/78	Review defendant Ferguson's answers to second set of interrogatories; further questions and compare with responses of others	2.50
9/5/78	Review City's response to interrogatory No. 28: operational plan-Casablanca	3.00
9/6/78	Research typicality of such operational plans re: proof and equitable relief	4.50
9/18/78	Review Kotler letter re PTC; conversation with Cazares	2.50

9/19/78	Review defendants' motion to amend order	1.50
9/25/78	Preparation for and argument re defendants' motion to amend order; discussion with Kotler re deposition of Chief Ferguson; further work on discovery	4.50
9/26/78	Draft order denying motion to amend previous order and accompanying letter	.50
9/26/78	Review and prepare notes for Cazares re Eltringham deposition	2.50
11/27/78	Review documents, all discovery and witness statements relevant to depositions of Innskeep and Webster: Notes to Cazares	3.00
11/28/78	Review documents, all discovery and witness statements relevant to depositions of Innskeep and Webster: notes to Cazares	2.00
11/30/78	Review documents, discovery and statements re defendant Smith: notes to Cazares	1.00

12/1/78	Investigative trip to Riverside: meet with witnesses	7.00
12/2/78	Investigative trip to Riverside: meet with witnesses	4.50
12/11/78	Conversation with Cazares re depositions	.50
12/14/78	Review relevant documents, disovery, statements Police Manual re Ferguson deposition: notes to Cazares	3.00
12/15/78	Review relevant documents, discovery, statements Police Manual re Ferguson deposition: notes to Cazares	3.50
1/8/79	Research contentions of law and instructions	2.00
1/11/79	Research contentions of law and instructions	2.50
1/12/79	Research contentions of law and instructions	2.00
1/13/79	Research contentions of law and instructions	3/50

1/18/79	Research tear gas grenades: expert	2.50
1/22/79	Telephone conversation with Cazares	.25
1/23/79	Work on pre trial order and memo of contentions of fact and law	4.00
1/24/79	Work on pretrial order and memo of contentions of fact and law	5.00
1/25/79	Work on pretrial order and memo of contentions of fact and law	4.00
1/26/79	Work on pretrial order and memo of contentions of fact and law	5.00
1/27/79	Work on pretrial order and memo of contentions of fact and law	7.00
1/28/79	Work on pretrial order and memo of contentions of fact and law	3.00
1/29/79	Work on pretrial order and memo of contentions of fact and law	6.00
1/30/79	Work on pretrial order and memo of contentions of fact and law	6.75

1/31/79	Work on pretrial order and memo of contentions of fact and law	7.00
2/1/79	Meet with Cazares in preparation for meeting with Kotler; work on preparation of pretrial order and memo of contentions of fact and law	5.00
2/2/79	Work on pretrial order and memo of contentions of fact and law	4.50
2/3/79	Work on pretrial order and memo of contentions of fact and law	5.75
2/4/79	Work on pretrial order and memo of contentions of fact and law	4.25
2/5/79	Work on pretrial order and memo of contentions of fact and law	7.00
2/6/79	Work on pretrial order and memo of contentions of fact and law	6.50
2/20/79	Preparation for hearing on 2/26	3.00
2/26/79	Preparation for and pretrial conference	5.00
3/7/79	Study discovery and witnesses statement	

	for trial notes and organization	3.00
3/10/79	Study discovery and witnesses statement for trial notes and organization	4.50
3/12/79	Review defendants objections to plaintiffs' issue to be litigated at trial	2.00
3/14/79	Review defendants objections to plaintiffs' issue to be litigated at trial	1.00
3/14/79	Research: all recent Circuit Cases or LEXIS	5.00
3/15/79	Research all Circuit cases	3.50
3/18/79	Research all Circuit cases plaintiffs' Supplemental Memo of Law	4.50
3/19/79	Further research; draft supplemental memorandum of law	5.00
3/20/79	Draft supplemental memorandum of law	3.00
3/23/79	Work re witnesses (friends and police officers) necessary for prima facie case	2.00

4/5/79	Review defendants' response to plaintiffs' supplemental memo of law	1.50
4/6/79	Review Kotler affidavit	.50
4/7/79	Preparation for 4/9 hearing	3.00
4/8/79	Preparation for 4/9 hearing	3.50
4/9/79	Preparation for and hearing before Court	5.50
4/12/79	Preparation for hearing 4/16	3.00
4/14/79	Preparation for hearing 4/16	4.00
4/16/79	Preparation for and hearing before Court	5.00
4/1879	Research for second supplemental memo of law	3.50
4/20/79	Research for second supplemental memo of law	3.00
4/21/79	Research for second supplemental memo of law	3.00
4/23/79	Research for second supplemental memo of law and first draft of	

	second supplemental memo of law	5.00
4/24/79	Complete writing of plaintiffs' second supplemental memo of law	5.00
4/26/79	Prepare litigation charts for trial	3.50
4/28/79	Prepare litigation charts for trial	2.00
5/2/79	Review discovery re all defendants' inconsistencies relevant to prima facie case and defense	3.50
5/3/79	Review discovery re all defendants' inconsistencies relevant to prima facie case and defense	4.00
5/4/79	Review discovery re all defendants' inconsistencies relevant to prima facie case and defense	2.00
5/9/79	Read recent case law re proof	3.00
5/16/79	Review defendants' response to plaintiffs' second supplemental memo law; research	2.00

5/21/79	Research defendants' response	4.00
5/24/79	Review defendants' motion to dismiss for failure to prosecute	1.50
6/15/79	Draft affidavit in opposition to defendants' motion to dismiss, meet with co-counsel re case	3.00
6/26/79	Review affidavit of Kotler in support of motion to dismiss	.50
7/9/79	Research for defendants' appeal of dismissal	3.50
7/10/79	Draft appellee brief	2.50
7/16/79	Review defendants' objection to modified plaintiffs' exhibit list	.50
10/19/79	Telephone conference with Cazares re settlement conference	.50
12/13/79	Preparation for and conference with Cazares reviewing entire case for trial	6.00
12/17/79	Review witnesses statement: notes and elements of claims	2.00

12/19/79	Review witnesses statement: notes and elements of claims	2.50
2/4/80	Conference with Cazares re status conference	1.00
2/14/80	Research use of statistical data provided by defendant City re pattern and practice/ or 1985 and 1986 claims	3.00
2/15/80	Research use of statistical data provided by defendant City re pattern and practice/ or 1985 and 1986 claims	2.50
2/20/80	Draft supplemental memo of contentions of law	1.50
3/4/80	Review and revise chart of prima facie cases	2.50
3/6/80	Review and revise chart of prima facie cases	2.00
3/7/80	Review witnesses' statements re elements of claim/defense	3.00
3/8/80	Preparation for and conference with	

	Cazares in Los Angeles: trial preparation	4.50
3/11/80	Research for jury instructions	4.00
3/13/80	Research for jury instructions	3.00
3/14/80	Research for jury instructions	3.50
3/18/80	Draft jury instructions	3.00
3/19/80	Draft jury instructions	3.50
3/21/80	Informed that trial re-set for 6/30/80/ telephone	.25
4/18/80	Work on instructions; joint and several liability concept-res ipsa and other burden shifting concepts	2.00
4/22/80	Work on instructions; joint and several liability concept-res ipsa and other burden shifting concepts	3.00
4/30/80	Review police operating manual re violations: notes to file	2.00
5/1/80	Research and draft instructions	2.50

5/2/80	Research and draft instructions	3.00
5/6/80	Review and research strict liability for City: constitutional implications	2.50
5/7/80	Review and research strict liability for City: constitutional implications	3.00
5/8/80	Review final argument structure: chart on what facts look like	2.00
5/16/80	Review witnesses statements	1.50
5/19/80	Review witnesses statements	2.50
5/21/80	Review discovery-individual activity	2.50
5/22/80	Review discovery-inconsistencies	3.00
8/25/80	Research and draft instructions	3.00
9/7/80	Research most recent **Monell** case law	2.50
9/10/80	Research most recent damages-relevant evidence **Carey** issues	3.00

9/14/80	Review police reports and discovery in preparation for conference with Cazares	4.50
9/15/80	Preparation for and conference with Cazares	6.50
9/16/80	Preparation for and conference with Cazares	3.50
9/17/80	Confer and prepare with Cazares re order of proof elements of cause of action; potential dismissals	4.50
9/18/80	Confer and prepare: use of firearms, tear gas, etc.	4.50
9/19/80	Research for special instructions	2.50
9/20/80	Research for special instructions	5.50
9/21/80	Research for special instructions	5.00
9/22/80	Research for special instructions	3.50
9/23/80	Conference and prepare: police reports and depositions for cross-examination,	

	review defendants' jury instructions	4.50
9/23/80	Confer and prepare particulars re special jury instructions	5.00
9/24/80	Draft idea for Cazares' final argument in view of testimony	5.50
9/25/80	Draft ideas for Cazares' final argument in view of testimony	4.00
9/26/80	Confer re final argument	1.50
9/29/80	Research on judgment NOV	3.50
9/30/80	Research on judgment NOV; draft arguments	4.00
11/6/80	Research motion for attorneys fees	3.00
11/7/80	Research motion for attorneys fees	4.00
11/12/80	Draft points and authorities	4.00
11/14/80	Draft points and authorities	1.50
11/15/80	Review time sheets	4.50

11/28/80	Work on attorney fee motion; review time sheet and draft affidavit	8.00
	TOTAL HOURS:	1,265.50

Executed this 6th day of January, 1981, at San Diego, California.

/ss/Gerald P. Lopez
GERALD P. LOPEZ

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

SUBSCRIBED AND SWORN TO before me this 6th day of January, 1981, at San Diego, California.

/ss/Marianne V. Roiz
Notary Public in and for
said County and State

Official Seal
MARIANNE V. ROIZ
Notary Public - California
My Seal Expires July 15, 1982

APPENDIX 9

KOTLER & KOTLER
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Attorneys for Defendants

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTOS RIVERA, et al.,

Plaintiffs,

v.

CITY OF RIVERSIDE, et al.,

Defendants.

No. CV 76-1803-MRP

DEFENDANTS' SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO MOTION BY PLAINTIFFS FOR ATTORNEYS FEES AND COSTS AND IN SUPPORT OF MOTION BY DEFENDANTS FOR ATTORNEYS FEES AND COSTS.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On or about January 8, 1981, Fee-Petitioners in the above entitled matter submitted three additional documents in support of their motion for attorneys fees:

1. Affidavit of Robert L. Winslow in Support of Plaintiffs Motion for Reasonable Attorneys Fees and Costs;
2. Supplemental Affidavit of Gerald P. Lopez in support of Plaintiffs Motion for Reasonable Attorneys Fees and Costs; and
3. Opposition to Defendants Motion for Reasonable Attorneys Fees and Costs.

What follows is Defendants' brief response to the above documents.

POINTS AND AUTHORITIES

1.

THE AFFIDAVIT OF ROBERT L. WINSLOW IS OBJECTED TO ON THE GROUNDS THAT IT IS IRRELEVENT, AFFIANT LACKS PERSONAL KNOWLEDGE, AND IT IS REPLETE WITH HEARSAY.

Under Rule 401 of the Federal Rules of Evidence "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Evidence which is not relevant is not admissible (F.R.E. 402). Although Mr. Winslow outlines a range of attorney rates, nowhere in Mr. Winslow's Affidavit does he state the amount that these particular attorneys charge. Courts have construed **Johnson v. Georgia Highway Express, Inc.**, 488 F.2d 714, 717-719 (5th Cir. 1974) to require "what is needed is the customary fee charged by these particular lawyers." **Preston v. Mandeville**, 451 F. Supp. 617 (S.D. Ala. 1978). Mr. Winslow's Affidavit is therefore irrelevant on the issue of reasonable attorneys fees in this particular case.

Rule 602 of the Federal Rules of Evidence requires that a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Paragraphs four and five of Mr. Winslow's Affidavit (the only paragraphs of his affidavit which refer to

Messrs. Lopez and Cazares with particularity), consist of Mr. Winslow's opinion based upon what he has been told. Nowhere in Mr. Winslow's affidavit does he assert that he has actually observed Messrs. Lopez or Cazares in the courtroom. Nowhere in his affidavit does he state that he has read any work product produced by Messrs. Lopez or Cazares. In short, Mr. Winslow, apparently, has had no opportunity to observe and perceive the facts which he sets forth by his own senses. Mr. Winslow simply lacks personal knowledge which is required for the proper admission of an affidavit as evidence in an action.

As this Honorable Court would be quick to recognize, the number of years that an attorney has practiced, and the law school from which he has graduated, taken alone, are not determinative of the proper reasonable hour billing rate for that person. In this case it is for this Honorable Court, not Robert L. Winslow, to determine the proper and reasonable billing rate for the attorneys involved. There is little doubt that this Honorable Court is qualified to determine intelligently and to the best possible degree this particular issue without enlightenment from Mr. Winslow.

Paragraphs four and five of Mr. Winslow's affidavit (the only paragraphs in his affidavit which refer directly to Mr. Cazares and Mr. Lopez) contain nothing but hearsay. These paragraphs set forth the education, the number of years in practice, the specialization, and the activities of Messrs. Cazares and Lopez, offered in evidence to prove the truth of the matter asserted, based upon facts of which Mr. Winslow has apparently been informed, but has no personal knowledge. Neither of these paragraphs should be admitted by this Court.

2.

MR. LOPEZ' HOURS MUST BE REDUCED BECAUSE OF HIS FAILURE TO KEEP CONTEMPORANEOUS TIME RECORDS.

Mr. Lopez submitted a lengthy supplemental affidavit purportedly setting forth the number of hours expended on this case.

Mr. Lopez, however, has failed to state that the time list he submitted was kept contemporaneously. Based upon the character of many of the entries on Mr. Lopez' list, i.e. "Read second separate (45 page) motion to dismiss filed by various individual defendants." (page 9, lines 9-10); "Work on motion to require further answers and to compel production of documents: deliberately ignored discovery stated and asserted such objections as 'hearsay' and 'inadmissability of evidence; objected to terminology as 'unintelligible" when the term 'neighborhood problem' was employed by defendants not plaintiffs; deliberately avoiding sub-parts to questions; asserting attorney-client privilege without even attempting to demonstrate that privilege exists and applies: refuse production of documents through blanket assertions of irrelevance of work product rule" (Page 12, lines 7-13); "Preparation for argument re Plaintiffs' motion re taxing of costs--

granted; further work on discovery" (Page 17, lines 14-15)

Each of the above entries indicates that the entry was not made contemporaneously with the event. This is particularly true of the last example noted wherein Mr. Lopez indicates that the Plaintiffs' motions re taxing of costs was granted as the date of 3/6/78 when he was making his preparation for argument. The other entries are simply editorial comments unlikely to have been made at the time the work was allegedly being done. Why would an attorney indicate how many pages a motion has on a time sheet, or how many interrogatories he received? Such comments are clearly designed for ths benefit of this Honorable Court in the instant motion for attorneys fees. **Heigler v. Gatter,** 463

F.Supp. 802 (E.D. Pa. 1978) directs that any figure that Mr. Lopez has reconstructed is suspect and must be reduced approximately 20% because of his failure to keep contemporaneous time records.

3.

BECAUSE PLAINTIFFS' CLAIMS AGAINST DEFENDANTS WERE FRIVOLOUS, UNREASONABLE OR WITHOUT FOUNDATION, DEFENDANTS ARE ENTITLED TO AN AWARD OF ATTORNEYS FEES UNDER THE CIVIL RIGHTS ACT.

Plaintiffs' opposition to Defendants' motion for reasonable attorneys fees and costs re: the granting of 18 Summary Judgments, misses the focal point of Defendants' contention: Plaintiffs simply neglected to engage in any discovery or investigation which would have enabled them to determine the proper defendants in such a lawsuit. As the affidavits of Gerald P. Lopez and Roy B. Cazares clearly point out, Mr. Lopez and Mr. Cazares began working on this case on August 21, 1975. The Complaint was filed by them on June 6, 1976. Nearly a year passed from that time that the attorneys first met with their clients and when the Complaint was eventually filed. At no time during that year--although Mr. Lopez has over 60 entries on his list of hours expended, and Mr. Cazares has over 20 entries on his list--was there any attempt to discover the names of the individual defendants who should be sued. Even though on January 14, 1976, Mr. Mr. (sic) Lopez made the following entry: "Research rationale and justification for John Doe practice in Ninth Circuit; alternatives in identifying unknown police officers," there seems to have been no attempt made to identify the unknown police officers, nor was there any attempt made to determine whether those police officers sued were even at the scene or on duty at the time.

It is our contention that without _any_ investigation on the part of Plaintiffs, Plaintiffs' claims against these particular Defendants were frivolous, unreasonable or without foundation. The Summary Judgments granted herein--holding that there was no triable issue of fact involved as to these defendants--bears this out.

DATED: January 13, 1981.

Respectfully submitted,

JONATHAN KOTLER
PATTI ANN KOTLER
KOTLER & KOTLER

/ss/PATTI ANN KOTLER
Attorneys for Defendants.

Office - Supreme Court, U.S.
FILED
OCT 18 1982
ALEXANDER L. STEVAS.
CLERK

No. 82-156

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

CITY OF RIVERSIDE, LINFORD L. RICHARDSON, MICHAEL S. WATTS, DAN PETERS, GERALD MILLER, and ROBERT PLAIT,

Petitioners,

vs.

SANTOS RIVERA, JENNIE RIVERA, DONALD RIVERA, JEROME RIVERA, LEE ROY RIVERA, MARK LARABEE, ENRIQUE FLORES, and MANUAL FLORES, JR.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

BRIEF IN OPPOSITION

GERALD P. LOPEZ
UCLA School of Law
405 Hilgard Avenue
Los Angeles, CA 90024
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Attorney for Respondents

QUESTION PRESENTED

Whether the Court of Appeals correctly affirmed a District Court's award of attorney's fees as reasonable under 42 U.S.C. § 1988 where the record contained substantial evidence that the District Court considered, applied and made findings concerning those factors called into question by the complexities of the litigation and necessary to support the reasonableness of the fee award.

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No. 82-156

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

CITY OF RIVERSIDE, LINFORD L. RICHARDSON, MICHAEL S. WATTS, DAN PETERS, GERALD MILLER, and ROBERT PLAIT,

Petitioners,

vs.

SANTOS RIVERA, JENNIE RIVERA, DONALD RIVERA, JEROME RIVERA, LEE ROY RIVERA, MARK LARABEE, ENRIQUE FLORES, and MANUAL FLORES, JR.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The plaintiffs are all Chicanos and live in the City of Riverside. In August 1975 they were in attendance at a party given at the home of Santos, Jennie and (their son) Donald Rivera for their nephew Lee Roy Rivera. A large number of unidentified police officers of the City of Riverside, "without a warrant, but with tear-gas and unnecessary physical force," (Pet. App. 1 at 1-3) [1] broke up the party and arrested many of the people attending including four of the plaintiffs. Criminal prosecutions were tenaciously pursued, but the "charges were dismissed for lack of probable cause." (Pet. App. 1 at 1-3.) [2]

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[1] Citations in this form refer to the appendix to the petition. The opinion of the Ninth Circuit is, contrary to the suggestion of the petition (Pet. at 2), reported. See **Rivera v. City of Riverside**, 679 F.2d 795, 796 (9th Cir. 1982).

[2] Testimony introduced by plaintiffs at trial, which led to judgments (continued)

Despite investigative efforts by plaintiff's counsel that began in late August 1975 (Pet. App. 5 at 5-71; Pet. App. 8 at 8-2), the details of the break-in, arrests and subsequent activity of the police officers and other city officials were -- as of the time of the filing of the civil complaint in this case -- sketchy, confused and almost exclusively within the knowledge of the defendants and other officials of the City of Riverside. Which of the tens of police officers involved did exactly what (both at the Rivera home and later) with whom and to whom was

---

for constitutional deprivations against both the City of Riverside and the individual police officers (Pet. App. 3), included evidence of seriously misstated facts in police reports that served as fabricated probable cause for the break-in, the arrests and the criminal prosecutions.

unknown and unlearnable. [3] Under these circumstances, plaintiffs sued thirty-two defendants, including the City of Riverside and individual police officers [4] alleging civil rights and pendent state tort violations. [5]

---

[3] The factual uncertainties and complexities that confronted plaintiffs throughout this case are perhaps best captured by the District Court's observations to defendants' counsel at a hearing on plaintiffs' motion for attorneys fees after the nine day trial and the jury's verdicts:

> THE COURT: Well, I think even up to the point of the trial -- and I will just say this for the record -- even up to and including the time the testimony was taken at trial, what each of those officers did wasn't even clear from what they said themselves. (See Appendix A.)

[4] Research of "John Doe" practice in the Ninth Circuit led, in part, to naming this number of police officers in the original complaint. (Pet. App. 8 at 806.) The Ninth Circuit notes this practical difficulty in footnote 2 of its opinion. (Pet. App. 1 at 1-14.)

[5] Defendants assert throughout (continued)

From the outset, plaintiffs' efforts

---

their petition that plaintiffs brought 22 claims against each and every defendant. (See, e.g., Pet. at 9.) The original complaint stated seven causes of action (as therein labeled). (Pages 1-15 of Excerpts of Record of Appellants' Opening Brief in the Ninth Circuit.) Claims against the individual officers were alleged on the bases of 42 U.S.C. §§ 1981, 1983, 1985 and 1986 and for false imprisonment, malicious prosecution and negligence. Since in 1976 municipalities could not be sued under Section 1983 (a point explicitly noted in footnote 6 of the Ninth Circuit's opinion (Pet. App. 1 at 1-17)), the claim for constitutional violations against the City of Riverside sounded directly in the Fourteenth Amendment -- a claim that was sometimes referred to in those pre-Monell days (**Monell v. Department of Social Services**, 436 U.S. 658 (1978)) as a "Bivens-type" action. See Eisenberg, **Civil Rights Legislation** 201 (1981); 89 Harv. L. Rev. 922, 934-34 (1976).

While what is labeled in the complaint as Seven Causes of Action might well be interpreted to be something more than seven claims, defendants' final total of 22 seems disingenuous. How did the defendants arrive at the number 22? If one examines pages 7 and 8 of the petition it appears that defendants, in their rush to arrive at an "impressive" number of total claims originally (continued) to vindicate their civil rights through this lawsuit were not well-received and were the target of considerable criticism and pressure. (The Ninth Circuit described plaintiffs' efforts as "politically unpopular" Pet. App. 1 at 1-2 - 1-3.) The District Court found that many attorneys in the Riverside community "would have been reluctant to

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brought by the plaintiffs, simply added together all the claims and other items that they themselves had listed there and labeled the final figure, misleadingly, claims. What they had listed on pages 7 and 8 may be catalogued as follows: 1. Constitutional Amendments (First, Fourth, Fifth and Fourteenth Amendments); 2. Statutory Causes of Action (42 U.S.C. §§ 1981, 1983, 1985(3) and 1986); 3. Statutory "Choice of Law" and Attorney's Fees Provisions (42 U.S.C. § 1988); 4. State tort claims (false arrest, malicious prosecution, negligence and others); 5. items of compensatory and punitive damages (bodily injury, property damage, lost wages); and 6. prayers for relief (declaratory and injunctive relief) and attorneys fees.

institute this action" (Pet. App. 2 at 2-2).[6] Any reluctance on the part of attorneys to represent plaintiffs in this action would seem, in retrospect, to have been well-founded. Such was the outrage in Riverside over these plaintiffs trying to vindicate their civil rights that, for example, those police officers dismissed from the suit on motions for summary judgment (Pet. App. 4) shortly thereafter filed in the

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[6] Defendants assert in their petition, without citation or support, "that there was absolutely no support for such a finding any place in the record" (Pet. at 15). But, in addition to the evidence produced at trial, counsel for plaintiffs expressly addressed themselves to this issue in affidavits in support of the motion for attorneys fees. (Pet. App. 5 at 5-63 - 5-64.) It is true, however, that defendants offered no evidence to dispute this fact; if anything, defendants offered (albeit unintentionally) indirect support for the district court's finding. (See, e.g., Pet. App. 6 at 6-90.)

Riverside Superior Court a malicious prosecution complaint naming both plaintiffs and their counsel as defendants. 7/ Found to raise a disguised federal constitutaional claim (whether under the circumstances the federal civil rights claims were brought in good faith by plaintiffs and their counsel), the state court suit was successfully removed to federal court and dismissed (Pet. App. 5 at 5-44 - 5-45). Because

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7/ The complaint (**Albee et al v. Rivera et al.**, Case No. 124614) was filed on April 10, 1978, three months after defendants were granted their motion for summary judgment. (Pet. App. 4 at 4-12.)

of the procedural nature of the dismissal,[8/] the threat of a renewed suit remains alive to this day.[9/]

After four years of discovery and two settlement conferences,[10/] a nine day

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[8/] After the district court denied defendants' motion to remand the suit to the Superior Court and dismissed their complaint (See **Albee v. Santos Rivera**, No. 78-2076), defendants appealed the judgment to the Ninth Circuit. (See **Albee v. Rivera**, No 78-3319). The appeal was resolved by stipulation to the effect that the District Court, having accepted jurisdiction, ruled the suit prematurely brought. See Appendix B.

[9/] Defendants only mention of this entire episode is an allusion to "work performed [by plaintiffs' counsel] defending an ancillary case and appeal" buried in a passage generally denigrating the District Court's judgment. (Pet. at 52.) Defendants' suggestion that the reasonableness of the time expended on these matters had not been raised explicitly by plaintiffs and considered by the District Court is false. (Pet. App. 5 at 5-44 - 5-45; Appendix B.)

[10/] Both settlement conferences (continued) trial ensued. The jury, following seven days of deliberation, found in favor of all plaintiffs and against the City of Riverside and five [11] individual officers on Section 1983, [12] negligence, false arrest and false imprisonment

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were ordered by and took place in the presence of the District Court. The final offer made by defendants, after being urged by the District Court to reconsider their substantial exposure at trial, was $10,000 in satisfaction of all plaintiffs' claims, attorneys' fees and costs. (Pet. App. 5 at 5-50 - 5-51.) At the time of plaintiffs' motion for attorneys fees, defendants offered no evidence to dispute this fact.

[11] While the Ninth Circuit opinion states that the jury found against four officers (Pet. App. at 1-4), the correct number is 5 (Pet. App. 3 at 3-1 - 3-13).

[12] The successful Section 1983 claims against the City of Riverside were tried according to the by then decided standards of **Monell v. Department of Social Services**, 436 U.S. 658 (1978).

claims. The jury awarded total damages of $33,350.[13]

On December 1, 1980, plaintiffs moved for reasonable attorneys fees and costs pursuant to Section 1988. (Pet. App. 5.) Defendants filed extensive written opposition and oral argument was heard on January 19, 1981. (Pet. App. 2 at 2-

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[13] The defendants declare in their petition that no restraining order was issued. (Pet. at 10.) Prominently omitted from the petition is any report of why and under what circumstances injunctive relief did not issue. At the hearing on plaintiffs' motion for attorneys' fees and in the face of defendants' efforts to reduce the fees because injunctive relief had not been granted (an argument reiterated in the present petition (Pet. at 47)), plaintiffs advised the District Court that they had not sought such relief because they perceived enjoining defendants to "obey the law" to be too broad. The District Court nonetheless observed, sua sponte, that "if you [plaintiffs] had asked for it against some of those officers I think I would have granted it." See Appendix C.

1.) Nearly three months later the District Court, "having heard and considered oral argument and having examined and considered the memoranda, affidavits and exhibits filed by the parties," (Pet. App. 2 at 2-1 - 2-2) [14] awarded plaintiffs $245,456.25 in attorney's fees (Pet. App. 2 at 2-4) [15] on the basis of written Findings of Fact and Conclusions of Law entered on April 7, 1981. (Pet. App. 2 at 2-1.) In so doing, the district court reduced plaintiffs' original request by the amount of costs not contemplated by Section 1988 (Pet. App. 2 at 2-6) and did not apply the multiplier requested by plaintiffs. (Pet. App. 5 at 5-17 - 5-26.)

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[14] Notwithstanding this express statement by the district court, the defendants insist throughout this petition, in diverse form and tone, that the district court did not consider their factual and legal contentions. Perhaps the most egregious example of this misrepresentation is to be found at page 17 of the petition. (Other examples may be found at Pet. at 23, 29, 31-33, 34, 46.) The defendants made the same statements in their briefs to the Ninth Circuit. See Appellees' Brief. That court rejected defendants "version" of the facts, of the record and of what the district court took into account in making its Findings of Fact and Conclusions of Law.

[15] The total figure includes $2,112.50 in law clerk fees. (Pet. App. 2 at 2-4.)

The Ninth Circuit affirmed the District Court's award as reasonable under Section 1988. (Pet. App. 1.) 16/ The Court of Appeals reviewed the record in detail and concluded that the district court "considered, applied and discussed the **Kerr** factors necessary to support

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16/ Defendants did not appeal the adverse jury verdicts or the district court's determination that the plaintiffs were the "prevailing party" and thus entitled to attorneys fees. (Pet. App. 1 at 1-4.)

the award." (Pet. App. 1 at 1-6.) [17/] Rejecting defendants' argument that all twelve factors must be mechanically invoked and discussed, the Ninth Circuit reiterated that the District Court must consider those factors "called in to question by the case at hand and necessary to support the reasonableness of the fee award." (Pet. App. 1 at 1-6.) [18/]

[17/] In **Kerr v. Screen Extras Guild, Inc.**, 526 F.2d 67, 69 (9th Cir. 1974), *cert. denied sub nom.* **Perkins v. Screen Extras Guild, Inc.**, 425 U.S. 951 (1976), the Ninth Circuit adopted the twelve factors first established as relevant to an award of attorneys fees in **Johnson v. Georgia Highway Express, Inc.**, 488 F.2d 714, 719 (5th Cir. 1974).

[18/] Defendants misleadingly report that the Ninth Circuit held that the District Court need not specifically discuss "any or all of the twelve factors" (Pet. at 19).

ARGUMENT

Reasons for Denying the Writ

I. The Ninth Circuit's Decision Does Not Conflict With The Decisions Of Other Circuits.

The conflicts asserted by petitioners do not exist. In quoting extensively from **Copeland v. Marshall**, 594 F.2d 244 (D.C. Cir. 1978) as an illustration of how other circuits "correctly" employ the factors first identified in **Johnson v. Georgia Highway Express, Inc.**, 488 F.2d 714, 719 (5th Cir. 1974), defendants have relied on an opinion which the District of Columbia Circuit has overruled. **Copeland v. Marshall**, 641 F.2d 880 (D.C. Cir. 1980) (en banc), overruling 594 F.2d 244 (D.C. Cir. 1978). The en banc Court of Appeals rejected the earlier panel's application of the **Johnson** factors and, in its place, adopted the "lodestar" or "market value" method of fee setting. 641 F.2d at 896. First espoused by the Third Circuit in **Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp.**, 487 F.2d 161 (3rd Cir. 1973), and its successor **Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp.**, 540 F.2d 102 (3rd Cir. 1976) (en banc) and shortly thereafter adopted by the Second Circuit in **City of Detroit v. Grinnell Corp.**, 495 F.2d 448 (2d Cir. 1974), 19/ the lodestar approach typically requires the District Court to

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19/ The citation of **Prate v. Freedman**, 583 F.2d 42, 48 (2d Cir. 1978) in the petition (Pet. at 24 footnote 1) is misleading insofar as it is not accompanied by citation to a case that makes clear that since 1974 the Second Circuit has espoused the lodestar approach. See e.g., **City of Detroit v. Grinnell Corp.**, 560 F.2d 1093, 1098 (2d Cir. 1977).

determine the lodestar by multiplying the number of hours reasonably expended by a reasonable hourly rate. 641 F.2d at 891. The District Court may then adjust the lodestar figure upward or downward to take account of factors such as risk and complexity of the litigation and the quality of the representation. 641 F.2d at 892-894. While **Johnson** factors remain relevant in such a scheme, they may well be incorporated into an analytical framework and each of the twelve factors need not be identified or discussed separately by the District Court. 641 F.2d at 889-890.[20]

Similarly, in citing without comment **Furtado v. Bishop**, 604 F.2d 80, 98 (1st

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[20] The District of Columbia Circuit Court observed that the twelve factors frequently overlap and are often imprecise. 641 F.2d at 890.

Cir. 1979) (Pet. at 24 footnote 1), defendants have relied on an opinion which the First Circuit displaced with its later opinion **Furtado v. Bishop**, 635 F.2d 915 (1st Cir. 1980). Lauding the Third Circuit's lodestar approach as "the most helpful to date" and borrowing extensively from the District of Columbia's en banc **Copeland** decision, the First Circuit joined these other circuits in shaping a market value method of fee setting which allows but does not require the discussion of all **Johnson** factors. 635 F.2d at 919-920.

Moreover, in citing only **Johnson v. Georgia Highway Express**, 488 F.2d 714 (5th Cir. 1974) (Pet. at 24), defendants have relied on an opinion which, standing alone, no longer reflects the state of the law in the Fifth Circuit. With its decision in **Matter of First Colonial Corp. of America**, 544 F.2d 1291 (5th Cir. 1977), cert. denied, 431 U.S. 904, the "Johnson test," to use the Fifth Circuit's own language, now "is similar to the Third Circuit's 'lodestar' method of computing attorneys' fees." **Copper Liquor, Inc. v. Adolph Coors, Co.**, 624 F.2d 575, n. 15 at 483 (5th Cir. 1981). While requiring that the **Johnson** factors be considered, the Fifth Circuit has now expressly disavowed the use of these factors as a "laundry list", 624 F.2d at 584, and, like the other "lodestar" circuits, the Fifth Circuit has begun to incorporate the factors into an analytical framework where both the lodestar and adjustments are determined on the basis of those factors significant in view of the particular case. 624 F.2d at 583. Both the Fourth Circuit and the Eleventh Circuit have adopted the Fifth Circuit's new lodestar-like methodology in opinions which defendants cites in the petition as supporting the Fifth Circuit's old and now rejected view. See **Anderson v. Morris**, 658 F.2d 246, 249 (4th Cir. 1981); **Fitzpatrick v. Internal Revenue Service**, 655 F.2d 327, 332-333 (11th Cir. 1982). (Pet. at 24 footnote 1.)

The lodestar and lodestar-like methods for awarding attorneys fees bear a strong resemblance to the Sixth Circuit approach cited approvingly in the Ninth Circuit opinion. (Pet. App. 1 at 1-9 - 1-10). In **Northcross v. Board of Education of the Memphis City Schools**, 611 F.2d 624 (6th Cir. 1979), cert. denied, 447 U.S. 911 (1980), the Sixth Circuit observed, after listing and noting its earlier mechanical reliance on the twelve **Johnson** factors, that it had "learned through experience . . . that merely providing a checklist of factors to consider does not lead to consistent results, or, in many cases, reasonable fees." 611 F.2d at 642. Noting that the factors overlap and may not apply in each given case, the Sixth Circuit went on to adopt an analytical approach predicated on the number of hours reasonably expended-times-reasonable hourly rate and flexible enough to accommodate increases in billing rate based on risk, complexity and quality. 611 F.2d at 642. Like lodestar circuits and the Ninth Circuit, the Sixth Circuit concluded that a District Court need not discuss specifically each of the twelve factors so long as the record reflects that those factors relevant to the case at hand were considered in arriving at a reasonable award. 611 F.2d at 643.[21/] And, contrary to the assertions and citations in the petition, this flexible use of the **Johnson** factors is consistent with decisions in the Seventh, Eighth and Tenth Circuits. See **Muscare v. Quinn**, 614 F.2d 577, 579 (7th Cir. 1980); **Kamberos v. GTE Automatic Electric, Inc.**, 603 F.2d 598 (7th Cir. 1979); **Herrera v. Valentine**, 653 F.2d 1220, 1233 (8th Cir. 1981); **Cleverly v.**

[21/] The only Sixth Circuit opinion relied on by defendants allegedly supporting defendants is **Northcross**. (Pet. at 51-52.) No Sixth Circuit opinion is cited in footnote 1 where the decisions from the other circuits allegedly supporting defendants' assertion of conflict are listed. (Pet. at 24 footnote 1.)

Western Electric Co., 594 F.2d 638 (8th Cir. 1979); **Battle v. Anderson**, 614 F.2d 251, 258 (10th Cir. 1980); **Francia v. White**, 594 F.2d 778, 782 (10th Cir. 1979).[22/]

That the Ninth Circuit opinion in this case is consonant with the decisions of other circuits is not surprising. In following its own early decision in **Stanford Daily v. Zurcher**, 64 F.R.D. 680, 682 (N.D. Cal. 1974), aff'd

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[22/] In citing **Herrera** and **Francia** (Pet. at 24 footnote 1), defendants rely on cases in which the Eighth and Tenth Circuit, respectively, espouse views consistent with those of the Ninth Circuit and inconsistent with the assertion of conflict made by the defendants. **Hampton v. Hanrahan**, 500 F.2d 600, 643 (7th Cir. 1979), though it was later reversed in part in **Hanrahan v. Hampton**, 446 U.S. 754 (1980), is only inaccurate in that it is an incomplete representation of the Seventh Circuit's view of the **Johnson** factors. (Pet. at 24 footnote 1.)

550 F.2d 464 (9th Cir.), rev'd on other grounds, 436 U.S. 547 (1978) (Pet. App. 1 at 1-6 - 1-7), the Ninth Circuit relied on a case that was cited explicitly in the legislative history of Section 1988 as correctly applying the **Johnson** factors.[23] Having noted that

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[23] What follows is the relevant excerpt from the Senate Report:

"It is intended that the amount of fees awarded under [Section 1988] be governed by the same standards which prevail in other types of equally complex Federal litigation, such as antitrust cases and not be reduced because the rights involved may be nonpecuniary in nature. The appropriate standards, see **Johnson v. Georgia Highway Express**, 488 F.2d 714 (5th Cir. 1974) are correctly applied in such cases as **Stanford Daily v. Zurcher**, 64 F.R.D. 680 (N.D. Cal. 1974); **Davis v. County of Los Angeles**, 8 E.P.D. ¶9444 (C.D. Cal. 1974); and **Swann v. Charlotte-Mecklenburg Board of Education**, 66 F.R.D. 483 (W.D.N.C. 1974.)"

S. Rep. No. 94-1011, 94th Cong. 2d Sess., 6 (1976).

the Fifth Circuit offered no guidance on how to use these factors, the district court in **Stanford Daily** modeled its use of the factors after the Third Circuit's lodestar method adopted in **Lindy.** 64 F.R.D. at 682. Moreover, the Ninth and other Circuits' flexible application of these factors is not only consistent with legislative history but is also sensible. Since District Courts are in the best position to scrutinize closely the complexities of the litigation and the quality of the representation, they must be given guidance yet be allowed the flexibility to make a determination of the proper fee award. Who better than a District Court to judge, for example, that other attorneys in the community would be reluctant to represent civil rights plaintiffs (Pet. App.

at 2-2) or that time spent pursuing claims against ultimately dismissed defendants was reasonable and reflected sound legal judgment in view of peculiarly difficult factual and legal circumstances surrounding a case? (See Pet. App. 2 at 2-4 - 2-5 and Appendix A). The Ninth Circuit responsibly reviewed the careful work of a district court which followed an approach consonant with the approaches of all other circuits in awarding attorney's fees under Section 1988. This Court should not grant the petition in this case on the basis of an asserted conflict that does not exist.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,
GERALD P. LOPEZ
Attorney for Respondents

APPENDIX A

EXCERPT FROM REPORTER'S TRANSCRIPT OF PROCEEDINGS MONDAY, JANUARY 19, 1981:

THE COURT: Let me ask you something, Mr. Kotler.

Suppose, just suppose that you had been involved in that situation and you had been one of the people who was arrested and taken in. And consider all the circumstances that occurred. Would you have known what participation there was of each one of the officers?

MR. KOTLER: I think, your Honor, when almost a year passes between the time I was arrested and taken in and the suit is filed, a year in which discovery could have been taken, and then people who are sued who weren't even on duty that night, weren't even there, weren't on duty, had nothing to do with it, I think I would know that.

THE COURT: How did they know? I mean, you have got a situation there where you have got teargas and people being herded out into the street. I don't think under those circumstances that the people who were in and around the house had much of an opportunity to take down the badge numbers of those officers.

MR. KOTLER: I think it is clear that the people who were arrested that night did not. I think it is equally clear that the attorneys who filed the lawsuit did.

THE COURT: Well, I think even up to the point of the trial -- and I will just say this for the record -- even up to and including the time the testimony was taken at the trial, what each of those officers did wasn't even clear from what they said themselves.

MR. KOTLER: I think that is so, your Honor, but you have to remember that at that point, at the time of the trial, 18 police officers had been let out by Judge Ferguson in this case because it was found by him that they had absolutely nothing to do with what happened.

THE COURT: I don't see how, I really absolutely don't see how, aside from taking the deposition of 50 officers, in which event there would have been objection and all kinds of motions made, I don't see how they would have known who it was who did what. Under the circumstances, I don't see how.

APPENDIX B

EXCERPT FROM REPORTER'S TRANSCRIPT
MONDAY, JANUARY 19, 1981:

MR. LOPEZ: The history of this case that was filed in the State Court in the County of Riverside is, I think, accurately described as "peculiar".

After it was dismissed by Judge Ferguson there was a disagreement between Mr. Kotler and Judge Ferguson, one that frankly we were on the outside of, as to whether or not it should be dismissed with or without prejudice.

In fairness to Mr. Kotler and the defendants, what Judge Ferguson intended was an order dismissing it with prejudice because he thought at that time that in order to comply with some federal version of a malicious prosecution claim there had to be a final order from which the defendants could move, and that a summary judgment in the context of a larger case was not a final order.

Mr. Kotler disagreed, claiming that if you dismiss it with prejudice, even with that meaning, that they shall -- that is, the 18 summarily adjudged defendants -- be forever foreclosed from bringing this claim again.

Mr. Kotler took it up on appeal, where he and Cazares argued before the Ninth Circuit. The Ninth Circuit essentially said, "What is it that you want?"

And Mr. Kotler said, "Simply not to be foreclosed in the future."

Both our papers and Mr. Cazares in oral argument said, "We understand that that is not the case and we don't mean to misconstrue what Judge Ferguson always had intended to do," in which case the order of the Ninth Circuit was handed down consistent with that.

What remains, however, it not only the possibility but I suspect the likelihood, that both our clients and Mr. Cazares and myself will again be sued in the Riverside Court on the basis of this malicious prosecution that we had already once successfully removed. So that I strongly suspect that we will be before this Court again on a case intimately related to the case that was tried before this jury, and go forward on that.

And that is all that remains.

THE COURT: I suppose that, if that is the kind of judgment which is being exercised, that is the kind of judgment that is being exercised, and it will come to me.

MR. LOPEZ: Thank you, your Honor.

APPENDIX C

EXCERPTS FROM REPORTER'S TRANSCRIPT OF PROCEEDINGS MONDAY, JANUARY 19, 1981:

THE COURT: * * *

The question of injunctive relief actually was something I wasn't going to address before the Court and I can tell you quite simply why not. While it was clearly not a question brought to the jury, since the jury has nothing to do with granting equitable relief.

THE COURT: Nothing, no.

MR. LOPEZ: -- we thought hard and long about precisely what entitlements we had for any of our plaintiffs with respect to some kind of future equitable relief.

But the bottom line of what we would ask for is virtually always denied by a court because a court properly, I think, says that for the future we will assume that all police officers will abide by the law, including the Constitution.

So that we brought nothing and have pursued nothing; indeed because we too agree with the Court that that will happen.

THE COURT: Now let me just say one thing for the record, and that is: That the plea was in there for injunctive relief. There wasn't any reason to pursue it, I suppose. But if you had asked for it against some of those officers I think I would have granted it.

MR. LOPEZ: I hope I can accept that as a proposition that says that in the event that anything happens in the future concerning those officers or our clients in the City of Riverside, that this Court will remain available for any appropriate equitable relief.

THE COURT: I would agree with you that there is a problem about telling the officers that they have to obey the law. But if you want to know what the Court thought about some of the behavior, it was -- it would have warranted an injunction. There cannot be a piece of evidence more appalling than the piece of evidence about the officer singing from the helicopter. There can't be any behavior more reprehensible than that, in my opinion.

Now I will not comment on some of the rest of it because part of the rest of the behavior at the time that this occurred was due to the fact that they didn't know what they were doing and they had nobody to tell them what they should do. There was no direction and they just simply lost their heads, totally. That is my opinion from the evidence.

I will not go on to castigate the officers, but in my opinion this was really a very sad day for that police department.

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OCT 19 1982
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CLERK

No. 82-156

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

CITY OF RIVERSIDE, LINFORD L. RICHARDSON, MICHAEL S. WATTS, DAN PETERS, GERALD MILLER, and ROBERT PLAIT,

Petitioners,

vs.

SANTOS RIVERA, JENNIE RIVERA, DONALD RIVERA, JEROME RIVERA, LEE ROY RIVERA, MARK LARABEE, ENRIQUE FLORES, and MANUAL FLORES, JR.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW:

What are the proper standards within which a district court may exercise its discretion in awarding attorneys fees to prevailing parties under Section 1988 of Title 42 of the United States Code.

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STATEMENT OF THE CASE

Petitioners hereby incorporate by reference their "Statement of the Case" as it appeared in their Petitioner for

Writ of Certiorari previously filed herein, at pages 7-23 thereof.

ARGUMENT

I. Certiorari Has Recently Been Granted by this Court on a Key Issue Raised in the Instant Petition.

One of the principal arguments raised in Petitioners' Petition for Writ of Certiorari herein is that review is necessary in the instant matter because, contrary to decisions cited in other circuits, the Ninth Circuit does not proportion attorneys fees awards made under 42 U.S.C. §1988 to accurately reflect the extent to which the plaintiffs have prevailed on the merits of their lawsuit.

In the instant matter, as has been repeatedly raised on every level from trial, through the Ninth Circuit, and in the within Petition, Respondents recovered on only 14% of their claims against only 19% of the defendants sued, and yet, were awarded attorneys fees for 100% of the time they submitted on their entire case, at an hourly rate which bears no relationship to what they customarily charged, or, apparently, to what was then the going rate in the community for litigators of their experience in civil rights matters.

It now appears that this Honorable Court is about to decide the question of whether or not an award of attorneys fees made pursuant to 42 U.S.C. §1988 should be proportioned to accurately reflect the extent to which plaintiffs actually prevail on the merits of their lawsuit in the district court, as a result of the granting of certiorari last term in the case of **Hensley v. Eckerhart**, No. 81-1244, ____ U.S. ____, 71 L.Ed.2d 847, 50 U.S.L.W. 3695 (March 1, 1982).

Thus, it would seem entirely logical that since certiorari has already been granted on one of the key issues raised in the within matter, that the Petition herein should likewise be granted to avoid the continued split of authorities that now reigns among the various circuits.

CONCLUSION

For the foregoing reasons, as well as for the reasons raised in the Petition for Writ of Certiorari previously filed herein, the said Petition should be granted.

Respectfully submitted,
KOTLER & KOTLER
BY: JONATHAN KOTLER
Attorneys for Petitioners